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Montgomery Ward & Co.

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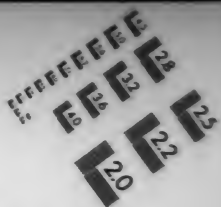
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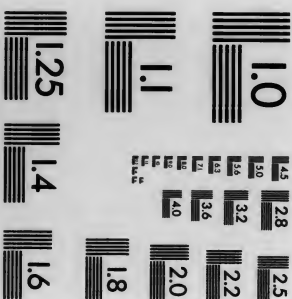
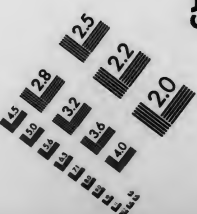
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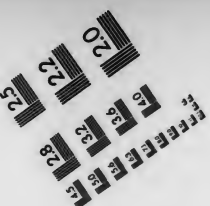
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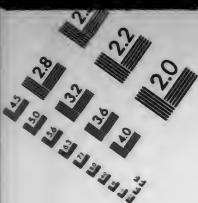


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U.S. CONG. HOUSE. SELECT COMMITTEE TO
INVESTIGATE SEIZURE OF MONTGOMERY WARD
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INVESTIGATION OF SEIZURE OF MONTGOMERY
WARD & CO. HEARINGS, H. Res. 521, 78:2.

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INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

HEARINGS

BEFORE THE

SELECT COMMITTEE TO INVESTIGATE SEIZURE
OF MONTGOMERY WARD & CO.

HOUSE OF REPRESENTATIVES

SEVENTY-EIGHTH CONGRESS

SECOND SESSION

PURSUANT TO

H. Res. 521

A RESOLUTION CREATING A SELECT COMMITTEE TO MAKE
AN INVESTIGATION RELATING TO THE SEIZURE BY
THE UNITED STATES, ON APRIL 26, 1944, OF
PROPERTY OF MONTGOMERY WARD & CO.

MAY 22, 23, 24, 25, and JUNE 6, 7, 8, 1944

Printed for the use of the Select Committee to Investigate
Seizure of Montgomery Ward & Co.



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SELECT COMMITTEE TO INVESTIGATE SEIZURE OF MONTGOMERY
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II

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III

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

MONDAY, MAY 22, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to notice, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Ramspeck (chairman), presiding.

Present: Representative Ramspeck (chairman), Clark (North Carolina), Byrne (New York), Monroney (Oklahoma), Dewey (Illinois), Elston (Ohio), and Curtis (Nebraska).

The CHAIRMAN. The committee will come to order, please.

I will ask the reporter to put a copy of House Resolution 521 in the record. That is the authority under which this select committee is operating.

(H. Res. 521 is as follows:)

[H. Res. 521, 78th Cong., 2d sess., Report No. 1410, House Calendar No. 238]

RESOLUTION

Resolved, That there is hereby created a select committee to be composed of seven Members of the House to be appointed by the Speaker, one of whom he shall designate as chairman. Any vacancy occurring in the membership of the committee shall be filled in the same manner in which the original appointment was made.

The committee is authorized and directed to make an investigation with respect to the seizure by the United States, on April 26, 1944, of property of Montgomery Ward and Company.

The committee shall report to the House (or to the Clerk of the House if the House is not in session) as soon as practicable during the present Congress the results of its investigation and study, together with such recommendations as it deems advisable.

For the purposes of this resolution the committee is authorized to sit and act during the present Congress at such times and places within the United States, whether or not the House is sitting, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books, papers, and documents, and to take such testimony, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member designated by him, and may be served by any person designated by such chairman or member.

The CHAIRMAN. I would like to state for the record that it is the purpose of this committee, insofar as it is humanly possible, to make this record contain all of the facts relative to the seizure by the United States of the plant of Montgomery Ward & Co. in Chicago on April 26, 1944. It is our purpose to try to get a chronological picture of the events leading up to the actual seizure.

The first witness we have before the committee is Hon. William H. Davis, chairman of the National War Labor Board.

Mr. Davis, we will be glad to hear from you.

Mr. DEWEY. Mr. Chairman, just before Mr. Davis starts, as the author of the resolution, I would like to just speak briefly, as a guide possibly to the investigation.

To my way of thinking the purpose of this investigation, brought about by the seizure of Montgomery Ward & Co., is as follows: (1) Has the President the power, even in time of war, to deprive the people of their private property without recourse to the courts of justice? (2) or has the Congress, in its desire to further the war effort, so worded its laws that the executive branch of the Government has been able to read more authority into them than the Congress is authorized to give or willing to bestow?

The CHAIRMAN. All right, you may proceed, Mr. Davis.

STATEMENT OF HON. WILLIAM H. DAVIS, CHAIRMAN, NATIONAL WAR LABOR BOARD, WASHINGTON, D. C.

Mr. DAVIS. Mr. Chairman and gentlemen of the committee:

I am, of course, delighted to have the opportunity to be here and to lay before the committee the facts in this case. I have prepared a statement and will submit it to the committee, and I will follow it, in general, in what I now say.

The National War Labor Board is a war emergency agency entrusted by the President, and by Congress in the War Labor Disputes Act, with the administration of the national program for settling labor disputes peacefully without strikes or lock-outs for the duration of the war. That is the job that has been entrusted to us.

The seizure of the Montgomery Ward properties in Chicago grew out of the execution of this program. In the public discussion of the seizure, as has just been indicated by Mr. Dewey, a great deal has been said about the constitutional rights of American citizens. As chairman of the War Labor Board I want to say to this committee that in carrying out the national program for peaceful settlement of labor disputes, there is, in my opinion, no need to risk in the slightest degree our constitutional rights. May I say, Mr. Chairman and gentlemen, David Harum used to say, "There is as much human nature in one man as there is in another, if not more." I think an almost passionate regard for our civil liberties and our constitutional guaranties has become second nature with American citizens. I might say that the War Labor Board, to paraphrase David Harum, has just as much of that second nature as any other citizen of the United States, if not more. If this *Montgomery Ward* case has put on the alert the citizens of America with respect to their constitutional liberties, I say so much the better. I think eternal vigilance is the price of liberty. When I speak of preserving the civil liberties of American citizens, I think of the liberties of all American citizens, the big fellow, the middle-sized fellow, and the little fellow; and I can assure this committee that the members of the War Labor Board—and I speak for all three sides of the triangle—are devoted to those liberties.

Now, the threat to our constitutional right is supposed to come, as Mr. Dewey's remarks again indicate, from a lack of definition, or in appropriate use, of wartime powers of the President. I am not going to discuss those powers. Whatever they may be and however

they may be defined there is, in my opinion, no reason why the national war labor disputes policy should not rest wholly upon congressional enactment, without any need to call upon any extraordinary presidential emergency powers.

There is one infallible way to prevent our war labor disputes program from jeopardizing our constitutional rights, and that is for Congress to make adequate provision for the foreseeable emergencies that may arise out of that program.

We have heretofore pointed out to Congress the kinds of emergencies that are likely to arise and we are prepared at all times to continue to do so. It has been our thought that Congress intended to and did adequately provide for such emergencies in the War Labor Disputes Act. If we are mistaken about that, then we think those emergencies should now be provided for. Why? Because it is only a foreseeable but neglected emergency that can call for presidential action or in any way raise the issue of conflict between the different branches of Government, or a threat to our constitutional liberties.

In the War Labor Disputes Act Congress gave to the National War Labor Board the power and duty, whenever the United States Conciliation Service certifies or the War Labor Board is of the opinion that a labor dispute exists which may lead to substantial interference with the war effort, to decide the dispute and to provide by order fair and equitable terms and conditions to govern the relations between the parties, "which," the act says, "shall be in effect until further order of the Board." The same act amended section 3 of the Selective Training and Service Act of 1940 to extend the President's statutory power to take possession of a plant, mine, or facility, upon his finding that there is an interruption, or threatened interruption, of operation as the result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort.

A dispute has now arisen on the proposition that the power of the President to seize under the act is less extensive than the power of the Board to settle labor disputes by its orders, or I may say the duty of the Board. It is now suggested that under the War Labor Disputes Act the power of the President to take possession of a plant exists only if the plant is engaged directly in the production of war materials. But the duty of the War Labor Board to settle a labor dispute under the act is clearly not limited to disputes arising in plants actually engaged in the production of war materials. It is clear that the war effort may be very substantially interfered with by a dispute which interrupts work in the field of transportation, or communication, or servicing or distribution generally; and our experience on the War Labor Board has also made it very clear that a dispute arising outside of a war production plant may, if it is not promptly settled, lead to interruption of work inside the war-production plant.

It would not do us any good, gentlemen, to have continued production in the plant that was making munitions if we could not move them out of the plants, if we could not get on the telephone and tell anybody to move them out, or if there are no distribution agencies in the country. We do not want the munitions in the plants, we want them in

Europe. I say without the slightest hesitation or reservation, gentlemen, that no one, no thoughtful person who has faced the issue, has ever suggested that the duty of the War Labor Board to settle disputes and present strikes is limited to plants making munitions.

Now, if the Congress wants to let the strikes go on in all other plants than those making munitions and stop them only in munitions plants, why, they ought to say so to us, because, I say—and I think I know what I am talking about from experience—I say that you just cannot have two kinds of strikes in this country, one prohibited and the other permitted. I do not mean we cannot overlook a little insignificant strike. The Anglo-Saxon people have great capacity for procrastination, and it is sometimes worth using. You have got a little strike and you just forget it, but if you have got a significant strike, that is, I mean, significant in numbers of men and not publicity, you have got to stop it because the people just cannot tell the difference between a permitted strike and an unpermitted strike.

Now, if, however, the power to enforce the Board orders is, as has been suggested, less extensive than the power and duty of the Board to settle disputes, the result will be emergencies for which Congress has made no provision, because we can tell you what the emergencies will be, and if you have not provided for them—and we thought you had and still think so, but if you haven't then you have not provided for foreseen emergencies. It is only from such foreseeable, but neglected, emergencies that any need to exercise extraordinary wartime Presidential powers or any threat to our constitutional liberties can arise, so far as the national policy for peacefully settling labor disputes is concerned. I want to underscore that, gentlemen. I think that is a good constitutional proposition and a just policy or program of settling labor disputes, because I think it is important but it is not the most important thing in the world, and I am the Chairman of the Board charged with the duty and, as far as I am concerned, I would not risk my constitutional guaranties for a second in order to carry out the policy. I think it would be out of order, a different order of magnitude, but I say to the committee that we do not need to risk any constitutional guaranties—all we need to do is to make adequate provision for the foreseeable emergencies that we are prepared to tell you all about.

Now, surely no one is as well able as Congress to settle this dispute about the scope and meaning of the War Labor Disputes Act. In peacetime such a dispute about the proper interpretation of an act of Congress might be taken into the courts and in a year or two we might have the opinion of the Supreme Court on the subject, as some of my lawyer friends referred to it, the "tribunal of ultimate conjecture." But this is a war emergency act, and the war ought to be over within the time it would take the courts to interpret it. We just cannot wait for that to happen. And why should we, since Congress must know best what they intend? It is our hope that the Congress will thoroughly inform itself as to the relation of this Montgomery Ward dispute to the national program for peacefully settling labor disputes and let everyone know just what it intended by the War Labor Disputes Act, to that we may all get on with the war.

We were told—and perhaps that level of hysteria has passed—that the country is shivering in fright at this action in the *Ward case*. Well, I do not think so. I do not think the country is shivering in fright at all.

Mr. DEWEY. We have got an awful lot of questioning letters.

Mr. DAVIS. All right, Mr. Dewey, but my opinion is, and I think you will share it, that the boys over there on the other side are not shivering in fright. No one here is shivering in fright. The boys have not a single item in which there is a shortage. They have got a complete supply of the finest military equipment and munitions that the ingenuity of the American people could devise, and that is pretty good. They have got plenty of every item. I do not think it is an exaggeration to say—and I am going to tell you why—that if we had not gotten up a system for settling all labor disputes, we would not have had the boys supplied with that equipment today. I think that can be demonstrated. In saying that, I am not taking, I hope, any credit to the War Labor Board, but I am taking credit to the good sense of the country and the excellence of the program which I am prepared to demonstrate is the best program for settling labor disputes without strikes that exists anywhere in the world.

Now, to make all that clear and see just what relation the Montgomery Ward case has to that program, I ought to tell this committee a little about the program itself, how it originated, and what its procedures are. I want to go back to the spring of 1941. With the expansion of the armament program in the winter of 1940 and 1941 the number of strikes rose very rapidly. Statistically, the man-hours lost in strikes in the defense program in the first quarter of 1941 was three times as great as in the last quarter of 1940. If you gentlemen will look to your own recollections you will remember riots at Allis-Chalmers, riots at the Harvester plant, strikes at every hand. There was nothing to indicate that this rapid rise would taper off and every reason to believe it would go right on rising, if something was not done about it. Existing governmental machinery for settlement of labor disputes was unable to cope with the wave of strikes. Walk-outs were seriously crippling defense plants and transportation. Rioting broke out in strikes in four plants of the International Harvester Co. at the Allis-Chalmers plant in Milwaukee, Wis.

In that tense atmosphere, on March 19, 1941, the President established the National Defense Mediation Board by Executive order to settle labor disputes. That Board really had no power other than the power of persuasion. The Board was set up as a mediation body and as a last step it could make public its findings with the idea that the pressure of public opinion would support the findings and move the disputing parties to accept them. Now, gentlemen, that was a framework, a form that was customary in peacetime. We were still not at war. But it pretty soon developed that it was not sufficient for the defense production, as I will go on to explain.

Immediately after the Board was created, and in this atmosphere of an appalling strike situation, we were called to a meeting here in Washington. We came, and met and had our pictures taken and went home again without doing anything because no disputes had been certified to the Board by the Secretary of Labor. This led to a great deal of caustic criticism around the country, and to some hilarity. Three or four days later the Secretary certified to the Board four important disputes; a steel corporation in Bridgeville, Pa., the Vana-dium Corporation of America in the same town, an important manufacturer of radio parts, and the plants of the International Harvester Co. in Illinois, Indiana, and Wisconsin. Chairman Dykstra, then chairman of the Mediation Board, was in Wisconsin appearing before

the legislature in connection with his duties as president of the university. I was called from New York. I remember very well coming down on the train that night thinking about the bad start we had made in coming down here, going back, everybody laughing at us. I said to myself, "We have got to do something now. We have got to stop these strikes or we will be just laughed out of existence." So, I thought a good deal about it.

I made up my mind that some procedure would have to be adopted, if possible, to get the men back to work while the disputes were being adjusted by the new Mediation Board.

Now, gentlemen, I say to you that that was a wholly novel idea. It is hard to realize it now, but I give you my assurance—and I have been in this business now—that up to that time you did not ask strikers to go back to work without settling the disputes, because if you did they said to you, "What do you think we went on strike for?" and they would dress that up in whatever picturesque language they are accustomed to use in such matters.

After consultations in Washington, we decided to take the risk of asking the men to return to work at once. We expressed our novel request in words that would give us a chance to crawl back to the trunk of the tree if anyone started to saw off the limb. We said to both parties, "This Board is asking you, and at the same time it is asking the other side, to take action as follows: first, that you agree today with your adversary to resume production and, second, that in any event and without fail you appear before this Board" on a specified day which in these four cases was either 1 or 2 days after the date of our telegram. I adopted that form of telegram because I did not know whether these men would go back to work or not. It never had been tried before; but, after all, if they did not go back to work and did come down here, I could say, "In any event, you came down here," and my face would not be too red. I emphasize that, gentlemen, because, as you look back at it today, it is hard to realize that that idea was entirely new. We felt that if the men did not go back to work they would "in any event" appear before the Board and we could go ahead with the settling of the dispute. The telegram was sent on a Thursday and, greatly to our surprise, we succeeded in getting all the men back to work on or before the following Monday, in all four cases. Now, I had a little side bet with John Steelman—I offered him 50-50 that we would get two of them back and fail in the other two. He was just as much surprised as I was.

The next case after that certified to us was the *Allis Chalmers case*. Now, in that case there had been a bitter strike going on I think for 17 weeks, despite the efforts of the Conciliation Service, the Secretary of the Navy and the Governor of Wisconsin. It would have been very foolish for us to send the fellows a telegram inviting them to go back to work while we settled their dispute, so we did not expose ourselves in that case. We called them down here to Washington, and within 48 hours of practically uninterrupted conferences, we succeeded on Sunday afternoon in getting an agreement, and they went back to work. From that time on we used this new procedure wherever we thought it would work. In April 1941—and I want to emphasize this—two-thirds of the workers involved in the disputes pending before us remained on the picket line until we settled the dispute, and only one third were on the production line. That figure

of continued production during the negotiations for settlement quickly rose to 90 percent, and by December 1941, 100 percent of the workers involved in the dispute pending before us were at their benches.

Now, that history, gentlemen, was the background of the no-strike, no-lockout agreement and pledge that was entered into by representatives of American labor and industry in the conference after Pearl Harbor, at which Senator Thomas and I were the moderators and which was approved by the President. I say to you that that was made possible by the fact that we had built up in the preceding 9 or 10 months this idea under the pressure of the defense emergency that men would stay at work and let somebody settle their disputes while they were still working. It was upon that agreement that the War Labor Board was founded.

The substance of the agreement was that in all labor disputes the men would remain at work and the employers would continue their operations if the War Labor Board were authorized and empowered to settle the dispute. That was the quid pro quo. They said, "We will stay at work, or we will not lock out if we can have the assurance that the dispute will be settled by a board to be set up for the purpose." That was the assurance given in all disputes. Gradually, thereafter, we established the rule that the War Labor Board would not proceed with the adjustment of the dispute while production was interrupted by strike or lock-out. That was a further development after the Mediation Board was superseded by the War Labor Board. It was the Mediation Board that said, "You go back to work and we will settle the dispute," and we played that game as intelligently as we could. It meant that if we did not persuade the men to go back to work, we would settle the dispute anyway. But by the time that the War Labor Board was set up, after Pearl Harbor—by that time we had gotten this idea across so far that we began to say to them, "If you don't go back to work we will not even look at the dispute," and we gradually built up the procedure that now prevails. It is a highly novel procedure in history, and that is that we say, "We will not look at your dispute; we will not try to settle it; we will not talk with you at all, until you get back to work."

This is the system of control now in effect, and it has been loyally supported by the body of American industry and by the responsible national and international officers of the great labor organizations of the country.

I say to you, gentlemen, that anybody in this war period that does not support that system is doing less than his duty to his country, I don't care whether he is on the labor side or on the industry side. We have to have a system. We built it up. It is now authorized and approved by Congress, and anyone that does not go along with it I think is out of line and not a good citizen in time of war.

This is not absolutely infallible. No system of control of the actions of millions of human beings can be infallible, because any such controls require understanding, responsibility, and discipline, including self-discipline.

I say to this committee, however, that in my considered judgment, it is the best system that has been devised anywhere, and it is sufficient to do the job for which it was intended.

I say that quite deliberately. I have had occasion to observe the systems here in this country in the past and in the other countries at present. You take England today, where any interruption of war-time production is punishable and where quite recently they have had to add to the prohibitions which previously existed. Well, in England—and it is right there up at the front—they have not been able to reduce the man-hours lost by strikes to the extent we have, in comparison with normal times. They have got theirs down to around 70 percent, and we have got ours down below 50 percent of the minimum of any post-war period. So I say—and I think I know what I am talking about—that it is the most effective system that has ever been devised anywhere. I do not hesitate to say that for fear somebody will say, "Here is the Chairman of the War Labor Board taking credit for too much." I think it is a system suited to our people and one that has grown out of the experiences of our people. It has been backed up by the President from the start, and it was backed up by the Congress in the War Labor Disputes Act.

We can adequately achieve the peaceful settlement of war labor disputes—and I say this quite deliberately—if we and the country clearly understand what Congress expects and authorizes us to do; if it is understood that all labor disputes which during the war cannot be settled by agreement or conciliation will be settled by orders of the War Labor Board; that the orders of the Board are issued by authority of Congress under the statutory law of the land established for the winning of the war; that the Board's orders impose an equal obligation of compliance upon everyone without fear or favor, and that what we do under congressional direction will be resolutely backed up by the Congress.

Now let me refer to our experience with the general acceptance and the rare rejections of our orders. Again I must go back to the National Defense Mediation Board period before the War Labor Board was set up, before Pearl Harbor.

The first real test of the power or influence of the new Mediation Board set up late in March of 1941 came in the bituminous coal fields. Mind you, gentlemen, we sat up just a board of mediation, with no powers to order anybody. Our conclusions were recommendations to the parties. The executive order that created the Board authorized us to publish our conclusions, if we thought it would do any good, and that is all. On April 2, 1941, all the coal miners went on strike because no new contract had been agreed upon to replace the old contract which expired March 31. On April 21, the Mine Workers and the Northern Appalachian Operators initialed an agreement but the strike continued because the Southern Appalachian Operators had withdrawn from the conference.

The President, on that day, proposed to the mine workers and to all the operators that the strike be terminated with the understanding that negotiations with the Southern Appalachian operators would be continued and any wage adjustments finally agreed upon be made retroactive to April 1. This proposal was declined by the Southern Appalachian operators and thereupon the dispute was certified by the Secretary of Labor to the National Defense Mediation Board.

Throughout April 25, 26, and 27—and I might say day and night—we tried to find a formula that would be acceptable to the Southern operators and to the miners, but without success. On April 27, the

Board issued a recommendation that the President's proposal of April 21 be accepted, because we could not find anything more acceptable or anything better. The Southern operators refused, and the shut-down of all the bituminous coal mines continued. The issue was squarely framed: Were the recommendations of the Mediation Board to be made effective or not? Now, they had no legal sanction, but there we were with the coal mines closed down. Well, I went over to see the President with a red face, because upon the answer to that question depended the existence of the Mediation Board and of the Government's emergency provision for settling labor disputes without interference with defense production. I reported the situation immediately and personally to the President. I found that he had been closely following the thing and that he was prepared to have the Government take possession of and operate the mines if necessary. So, when I spoke with the President I found out within a very few minutes after we met and started the discussion that the National Mediation Board could count upon the determined support of the President in the work it had been called upon to do. I felt that the problem was solved. The Southern operators were informed of this decision and decided to accept the President's proposal of April 21. They indicated their acceptance on April 28, and work was resumed in all the coal mines on April 30. Now, that was the first show-down, really, of whether this Board, the old Board, was going to be backed up.

The next case in which the recommendations of the Mediation Board needed to be backed up was one in which it was the workers who refused to abide by the recommendations of the Board. That was the North American Aviation, Inc., case in Inglewood, Calif. A labor dispute in that important airplane plant had been certified to the Board, and during the Board's consideration of the case, on June 5, 1941, a strike tied up the plant although the Mediation Board had been assured by the union that there would be no interruption of production during our consideration of the dispute.

On Saturday, June 7, the President announced that if the strike were not ended by Monday, the United States Army would be ordered to occupy the plant. The strike continued, and on Monday, June 9, the Army took possession, troops cleared the entrances to the plant, and men started returning to work. On July 1 the recommendations of the Mediation Board were accepted by both the company and the union and the Army withdrawn from the plant. I might say that the international officers of the union took over and removed the local officers who had been responsible for the strike.

This was the first case in which possession of a plant was taken by the Government. I do not recall that there was anything but universal approval of the action of the President in that case.

The next seizure of a plant was made necessary by the refusal of the United States Steel subsidiary, the Federal Shipbuilding & Dry Dock Co., to abide by the Board order providing for a voluntary maintenance of union membership for the duration of the contract between the company and the union. You could not have a better contrast than between the two cases. One case was a union, a local union, badly led, disciplined by the parent union but causing all this trouble, and on the other side you had the greatest corporation in the country with one of its subsidiaries refusing to abide by the

orders of the Board, or the recommendations as we called them then. The shipyard was seized August 23, 1941, and operated by the Navy until January 5, 1942, when it was returned to the possession of the company after the recommendation of the Mediation Board had been complied with.

On October 30, 1941, the plant of Air Associates, Incorporated, at Bendix, N. J., was seized because management refused the offer of the Defense Mediation Board to negotiate a contract. That was a case, gentlemen, of a very self-sufficient management. They thought they were good American citizens, I guess. They thought, "Well, we can run our own business, we won't let anybody interfere." The trouble with it was it was interfering with the national defense program. The plant was shut down, we were not getting the products, and we stepped in there and tried to straighten it out. They would not pay any attention to the Board, so the plant was operated by the Army until December 26, 1941, when a new management signed a collective bargaining agreement with the employees.

Now, I am the kind of an American citizen that has come from a part of the country where people like to enjoy their personal liberties. They do not like to have themselves interfered with by Government, and all that, but there comes a tide in the affairs of men when you have to interfere with the sort of a self-sufficient citizen that was represented in this *Air Associates* case. They just have to be told what to do, and they were told in this case. They refused, and they were taken over. The management was revived and we were getting some war production out of the plant.

The National War Labor Board was established January 12, 1942. It has settled more than 6,700 disputed cases since its establishment. It has had to refer to the White House only 18 cases out of the 6,700. Eight of these cases had to be referred because the company refused to abide by the Board's orders, and 10 had to be referred because the union refused. Three of these cases involved the coal mines, of the union cases. In one of the 8 cases of employer refusal, the original Montgomery Ward dispute, the order of the Board was accepted at the request of the President and seizure of the plant was not necessary. In 4 of the 10 union refusal cases the men returned to work without seizure after referral to the White House. The President has had, therefore, to seize 7 plants because of company refusal and 4 plants and coal mines because of union refusal to abide by War Labor Board orders.

Now, that, gentlemen, I think gives the committee the background against which this dispute in Montgomery Ward should be viewed, and I want to say here, before I go into the foreground of it, again, and with the utmost sincerity, we have got a program to administer of vital importance to the country, but which presents no insuperable difficulties. We can administer it according to the directions of the Congress. All we want is for the Congress to tell us what to do and we will do it. We can point out to the Congress the emergencies that are going to arise and they can provide for them. If we do that and if they do provide for them, as I believe they have, then there will arise no occasion for calling upon whatever constitutional powers the President may have in an unforeseen emergency, and our civil liberties and our constitutional guarantees will be wholly preserved without any possibility of stalling our program of settling labor disputes.

Now, I want to discuss the proceedings before the War Labor Board in the *Montgomery Ward* case itself. On June 2, 1942, the Secretary of Labor, acting pursuant to Executive Order 9017, certified to the War Labor Board a dispute between Montgomery Ward Co. and the United Mail Order, Warehouse and Retail Employees Union, which on February 28, 1942, had been certified by the National Labor Relations Board as the exclusive bargaining representative of the company's employees in the mail order house and retail store in Chicago. That was, you understand, gentlemen, under Executive Order 9017, June, 1942, prior to the passage of the War Labor Disputes Act. The disputes arose over the terms of a collective-bargaining agreement relating to union security, arbitration of employee grievances and seniority. The company then raised for the first time its objection to the jurisdiction of the Board, claiming that since it was not engaged in producing or manufacturing war materials, the Board had no authority to act.

On June 16, 1942, by a unanimous vote of its labor, industry and public members the Board afforded the company a full opportunity to elaborate its objections to the Board's jurisdiction and to present evidence on the merits of the disputed issues before a tripartite panel appointed by the Board. The Board appointed as members of the hearing panel Mr. Lloyd K. Garrison, then dean of the University of Wisconsin Law School, and now a public member of the National War Labor Board; Mr. William Hanscom, a labor representative; and Mr. Joseph L. Miller, an employer representative.

Now, I would like to interpolate there, gentlemen, these remarks: That is as good a panel as you could get. Lloyd Garrison, you all know, has had great experience in this field. He was a man of sound judgment. The others were carefully picked, because we had had experience with Montgomery Ward the year before—a rather amazing experience. In the Gypsum Co. there had been a strike and the Mediation Board had taken hold of it and tried to settle it. We invited Mr. Avery to come down here, and he refused. I remember Carl Adams, of the Air Reduction Co., who was a personal friend, and Carl was a member of the Board at that time—I asked him to try to persuade Mr. Avery to come down. No; he would not come to Washington, would not have anything to do with it. Well, I looked around and thought the thing over, and I got Owen Young, who was a personal friend of mine and a personal friend of Mr. Avery, and certainly one of the world's great mediators—had been to Germany and tried to settle the war claims and all that—everybody knows him. I went to Owen Young and persuaded him to take the job, as an agent of the Board, to try to straighten this thing out with Mr. Avery. I had some trouble to get him to do it, but I made a personal appeal to him, and he finally agreed.

He went out to Chicago and, as he told me the story, he spent all the afternoon and evening with Mr. Avery and attempted to get him to agree to certain things which he, Mr. Young, had recommended, one of them being that there should be arbitration of any dispute arising under the contract itself, or any grievance arising under the contract itself, not outside of the contract but under the contract itself. Mr. Young told me about it afterward, and he said he had a very pleasant time with Mr. Avery, tried to make him see the light, and that after a long session, on parting, Mr. Avery said to him,

"Mr. Young, you have made the best presentation of an indefensible position I ever heard." Mr. Young felt disappointed, he thought he had been doing quite a job but he had not gotten anywhere. The result was that everything we suggested in that case was rejected by Mr. Avery and we were never able to bring it to a conclusion. The thing that finally wound it up was that in November of 1941 the C. I. O. people withdrew from the mediation board because of an internal row, and the mine workers withdrew all their cases before the Board, including this case, which we had not been able to settle all that time.

Now, having that background, I knew that in this dispute we would want the best material we could get, and we selected Lloyd Garrison as the chairman.

Well, then took place hearings before the panel during which the parties were given full opportunity to present evidence, oral and documentary. At the close of the hearing the panel unanimously recommended to the Board that the case fell clearly within the Board's jurisdiction, and on June 29, 1942, the Board again by unanimous vote of its labor, industry, and public members, overruled the company's objection to its jurisdiction and determined upon a procedure by which to dispose of the issues remaining in dispute.

I want to interpolate again in this Montgomery Ward dispute from the beginning, in all the votes of the War Labor Board—and believe me the industry representatives on the War Labor Board were not born yesterday, they are pretty tough babies—in all the votes on the 17 occasions on which the Board has had to vote there has never been but one single vote of dissent from any of our findings, and that was one interim order, really, in which we had a new member on the Board who did not really understand the picture and voted against the rest of them; with that one exception the vote has always been unanimous, including all the industry members.

Well, Montgomery Ward is one of the two largest mail-order houses in the United States. It does 41 percent of the national mail-order business. It operates, in strategically located centers in 47 States of the Union, a total of more than 600 retail stores. It is not, if I may interpolate here, a corner grocery store. It employs approximately 78,000 people. In 1943, its gross sales amounted to \$634,000,000. Its customers number in the millions. It owns four factories which manufacture all of its requirements of paint, varnish, and fencing, and part of its requirements of farm machinery and supplies. It takes a substantial part of the output of many independent factories throughout the country. The items of merchandise it handles include automobile supplies, farm machinery, electrical supplies, hardware, home furnishings, and so forth.

We know that the company's stores have been concentrated in predominantly farming States and that they are located in small cities and towns which are farmers' shopping points. Since the company sells primarily to farmers its importance to the national distributive is revealed by the fact that the farmers of the country rely upon the two great mail-order houses, Montgomery Ward and Sears, Roebuck, for 35 percent of all their dry goods needs, more than 20 percent of their motorized equipment, 26 percent of their automotive accessories, 25 percent of their paint requirements, 19 percent of their fencing and some 20 percent of their clothing needs. I should

not think, gentlemen, there would be any doubt that a company which fills these needs of the American farm population is a major factor in the national wartime economy. Nor do I think there can be any doubt that curtailment of the company's services, whatever the cause, would be felt in many important localities in the country.

In the light of these facts, it was the unanimous opinion of our labor, industry, and public members that this company is engaged in activities directly related to the successful prosecution of the war. It was our unanimous opinion—and I would like to have this understood—first, we found that the company itself was engaged in activities directly related to the successful prosecution of the war, and, second, it was our further unanimous opinion that failure or refusal of the Government in time of war to furnish a means of peacefully resolving disputes directly involving the employees of this company and threatening to involve thousands of employees of other companies would, without the slightest doubt, lead to substantial interference with the war effort.

Now, I wanted to refer to the fact that Montgomery Ward has had occasion to make application to W. P. B. and other agencies of the Government for special privileges under our somewhat controlled economy. They had to have some trucks, for instance, from Mr. Eastman's outfit, and in their applications for those trucks they represent to the Government that they are engaged in essential activities, and the Government agrees with that and gives them these privileges. For instance, they say, and I have here one of their applications signed by their traffic manager to the Office of Defense Transportation in 1944, "This company is engaged in a business considered an essential civilian activity and as supporting the war effort, because it makes available to the general public throughout the country a great variety of merchandise essential to its daily life and directly related to the national health, safety, happiness and general welfare." So, it was our opinion, as I say, that the company's activities were essential to the general welfare or necessary to the general welfare, and we were further of the opinion that an interruption of their activities or failure to settle this dispute would result in the dispute spreading into other fields.

Now, I should like to present to the committee the unanimous opinion of the Board on this jurisdictional issue in the first *Montgomery Ward* case, and if I may, Mr. Chairman, I will put it in the record so that it may be referred to, because the opinion was unanimous and carefully considered. I would like to read into the record a few excerpts from the report of the panel of which Mr. Garrison was the chairman and which was incorporated by the Board in its opinion. I am quoting from the panel's opinion which was adopted by the Board.

Mr. ELSTON. May I ask right there, Mr. Davis, whether that was before the War Labor Board was set up?

Mr. DAVIS. It was after the War Labor Board was set up by the President. It was the War Labor Board then existing under authority of the President, but it was before the passage of the War Labor Disputes Act.

These are the extracts that I want to read from that opinion of the the panel, the Garrison panel, which was adopted by the Board. After

referring to the previous activities and their effects upon the economy of the country the opinion went on:

But the most important question is not what effect a strike in Chicago would have on the company's business there and elsewhere, but what effect it would have on industrial relations generally, and particularly on industrial relations in plants directly producing or distributing war materials. If 5,500 workers of Montgomery Ward may properly strike in Chicago for higher wages and union security—the chief issues in this dispute—it seems to us almost certain that other workers in other establishments would feel that they should have the same right and that once a strike of the dimensions which are here threatened, against an employer as well known as Montgomery Ward, and in an area as highly industrialized as Chicago, were allowed to take place on the theory that this Board lacked authority to deal with the dispute, a fire would be started which before very long might turn into a conflagration.

We do not think that the workers, or the general public for that matter, would grasp clearly the distinction which the company seeks to make between concerns producing or distributing war materials and those producing or distributing non-war materials. We do not think that it would be possible as a practical matter to have one part of industry free to indulge in strikes and lock-outs and another part bound to submit their disputes to this Board and to forego strikes and lock-outs.

As a matter of fact, gentlemen, I may interpolate, there is no such distinction. You take food. Food, itself, is that a war material, or isn't it? We have got a total war here. You just cannot say X is war material and Y is not. As I said before, it does not do you any good. I think Mr. Dooley made this remark years ago, "it does not do you any good to have food in Maine and the people you want to feed in Florida." It is no good to have a war production plant if you cannot supply it with transportation and all the ramified social services that go with modern industry.

Reading again from the opinion:

We do not suggest to the board—

our panel said—

that every dispute, however small or isolated, concerns the national policy or properly comes under the Board's jurisdiction. Necessarily a selection must be made between those whose scope and location and probable effects are such as to threaten the public interest in the midst of war, and those which are of only incidental significance. Their selection, under the terms of the executive order, is normally made in the first instance by the Secretary of Labor. When a dispute is certified to this Board, it means that in the judgment of the Secretary of Labor, the dispute one which, in the words of the Executive order, "might interrupt work which contributes to the effective prosecution of the war."

The words of the President's order ought not to be given a technical construction. The cases before this Board are not law suits. They are living situations charged with emotion and potentially of conflict, and they have to be considered in all their ramifications and in the light of the history of industrial controversies and the needs of the hour. If there is any doubt in a particular case that doubt ought to be resolved in favor of keeping the peace, for this Nation cannot prosecute a war for its survival in the midst of internal dissension and disruption.

The panel has unanimously concluded that if the threatened strike of the Montgomery Ward workers in Chicago were allowed to occur, its probable effects, both immediately and in the long run, on work contributing to the effective prosecution of the war would be sufficiently serious to warrant the Board's taking jurisdiction. And we, therefore, recommend the entry of an order to that effect by the Board, and its transmission to the parties.

Then, the Board did so order.

(The full text of the opinion is as follows:)

NATIONAL WAR LABOR BOARD

Case No. 192

JUNE 29, 1942.

In the Matter of: Montgomery Ward & Company, Inc. (Chicago, Illinois) and United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale & Dept. Store Employees of America, Local #20, C. I. O.

The Directive Order in this case was approved unanimously by the National War Labor Board, the following members voting: Frank P. Graham, Wayne L. Morse, George Meany, Thomas Kennedy, Roger D. Lapham, and Richard R. Deupree. Mr. Wayne L. Morse, Public Member, was designated to write the opinion for the Board.

OPINION OF THE BOARD

I. FACTS

A. Procedural Steps Leading to This Decision.

The record of this case shows that the dispute was certified to the National War Labor Board by the Secretary of Labor on June 2, 1942. When the company was informed of the certification it challenged the Board's jurisdiction over the dispute, alleging that the controversy did not fall within the premises of the President's Executive Order of January 12, 1942, said order creating the National War Labor Board.

On June 16, 1942, the Board in Executive Session unanimously resolved,

That in Case No. 192, Montgomery Ward and Company and United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale & Department Store Employees of America, Local 20, CIO, the Company be advised the Board has taken jurisdiction of the case and any objections which the Company has may be stated before the Panel at the hearing on June 22, 1942.

On the same day, the Board informed the company by telegram that it would be given a full opportunity before the panel to elaborate its position on the jurisdictional question as well as on the merits of the dispute, and that if the question could not be settled by agreement at the panel hearing the panel would submit a report to the Board with recommendations upon all issues, including the jurisdictional question.

The Mediation Panel appointed by the Board to hear the disputants was composed of Mr. Lloyd K. Garrison, Dean of the University of Wisconsin Law School and Public Representative; Mr. William Hanscom, Employee Representative, and Mr. Joseph L. Miller, Employer Representative.

Hearings were held before the panel on June 22, 23, and 24th. The transcript of record of the panel hearings makes clear that the company and the union fully presented their respective positions on the jurisdictional question and that the parties understood that the record which they made before the panel would serve as the basis for the Board's final determination of the issue as to its jurisdiction over the case. On Friday, June 26, 1942, the panel submitted a unanimous written report to the National War Labor Board, setting forth the finding that the case clearly falls within the jurisdiction of the National War Labor Board. The panel also recommended that the Board should appoint an investigator to study the wage question involved in the case and to report to the parties before the adjourned hearing on July 13, 1942.

The Board requested the members of the panel to appear at an Executive Session of the Board held on June 26, 1942, at which meeting a thorough discussion of the record made by the parties before the panel took place. As a result of a careful analysis of the record and a thorough consideration of the report of the panel, the Board by unanimous vote at its Executive Session on June 26, 1942, reached the conclusions as set forth in the Directive Order of this case.

B. Background of Dispute.

As pointed out by the panel in its report:

The Company is engaged in the sale and distribution of merchandise through mail-order houses and retail stores. It owns and operates nine mail-order houses, some 650 retail stores, and over 200 mail-order sales units throughout the United States. The Company's net sales have been aggre-

gating over \$500,000,000 a year. Sales by the company's Chicago mail-order house aggregated, in the 12 months ending June 1, 1942, \$85,707,308. In the same period the sales in the company's Chicago retail store aggregated \$3,985,837.

The instant controversy involves approximately 5,500 workers, about 300 of whom work in the Schwinn Warehouse. On August 26, 1940, the union was certified by the National Labor Relations Board as exclusive bargaining agent for these employees. On February 28, 1942, the union was certified by the National Labor Relations Board as the exclusive bargaining agent for some 5,000 workers employed in the Mail Order House of the company, which is located several miles away from the Schwinn Warehouse.

The Panel Report states:

"Across the street from the Mail Order House is the Retail Store, where, on the date last mentioned, the Union was certified as the exclusive bargaining agent for some 200 employees. The union also represents, by certification on the same date, some 15 or 20 workers in the South Building, immediately adjoining the Retail Store. By letter from the company dated April 27, 1942, the union was recognized as the exclusive bargaining agency for some 40 workers in the photographic department of the South Building. By a similar letter dated May 18, 1942, the union was recognized as the exclusive bargaining agency for some 75 to 100 maintenance employees in the South Building and in the Administration Building, which houses the Retail Store.

"No agreements have been entered into between the Union and the Company with respect to any of these employees.

"Negotiations with respect to the Schwinn Warehouse began in September 1940 and continued intermittently and unsuccessfully for upwards of a year. Negotiations were resumed in March of this year looking toward an agreement covering the employees in all the different units—the Schwinn Warehouse, the Mail Order House, the Retail Store, the South Building, and the Administration Building.

"Toward the end of April, a strike was threatened, and efforts at conciliation having proved fruitless, the case was certified to this Board on June 2, 1942."

C. Contentions of the Parties on the Issue as to Jurisdiction of the Board over this Dispute.

The Report of the Panel summarizes the contentions of the parties on the jurisdiction issue as follows:

"The Company contends that the Board is without jurisdiction to adjust the dispute, because the Company does not produce any war materials, has no government contracts, and does not distribute what cannot be readily obtained by purchasers elsewhere. Therefore, the Company argues, the dispute is not one 'which might interrupt work which contributes to the effective prosecution of the war' within the meaning of Section 3 of the President's Executive Order setting up the Board.

"The Union contends, first, that the company's chief mail-order customers are farmers; that the Company is engaged in selling farm equipment, machinery, and things from local stores in the farm areas; that farm mechanics serving others besides themselves rely on procuring from the Company by mail order their tools and equipment; that, in particular, the Company has supplies of wire for haw baling and binder twine which are unprocureable in ordinary retail stores; and that farmers who have purchased farm machinery from the Company can get replacement parts only from the Company, since the machinery sold by the Company's competitors differs in kind from that sold by the Company.

"The Company replies that only about 2½% of all the net sales of the Chicago Mail Order House represent farm equipment, and that, even if the Chicago House were closed by a strike, the farmers could get adequate supplies from other mail-order houses of the Company or from the Company's competitors.

"The Union's second main argument is that a strike which would close the Company's Chicago units would have grave repercussions elsewhere," which would be most certain to spread an interruption of work, thereby interfering with an effective prosecution of the war.

II. DECISION

A. Issue as to Jurisdiction.

It is the decision of the National War Labor Board that this dispute clearly falls within the terms of the President's Executive Order of January 12, 1942, which order flows from the national understanding entered into with the Presi-

dent by American labor and industry—"That for the duration of the war there shall be no strikes or lock-outs and that all disputes shall be settled by peaceful means and that a National War Labor Board be established for the peaceful adjustment of such disputes."

A review of the record made by the parties on the issue of jurisdiction in this case satisfies the Board that the dispute is one which in accordance with the language of Section 3 of the Executive Order, creating the Board "might interrupt work which contributes to the effective prosecution of the war."

In reaching this conclusion, the Board approves and accepts the comments and conclusions which the panel set forth in its unanimous report when it stated:

"It is certain that if the Board does not take jurisdiction the threatened strike will occur, for every other avenue of settlement has been exhausted, and the Company flatly refuses to submit the issues to arbitration. The union asserts that it has over 4,000 dues-paying members in the Chicago units, out of some 5,500 eligible workers, and that a strike would effectively close down the Chicago units. The union has locals in the company's stores or warehouses in Brooklyn and Denver and is organizing in Albany and Baltimore. In the Detroit stores alone some 3,000 employees are represented through an election which the union won last fall.

"In these localities, although the disputes have not been formerly certified to this Board, the union says that there exists the same deadlock in negotiations over the same issues as in the Chicago dispute (although in Detroit the parties are operating under an oral agreement which, according to the union, is dependent upon the outcome of the present controversy). Moreover, the union has about 250 locals in 37 states in plants other than those of Montgomery Ward, and the union considers it likely that many of these employees would take sides against the company in localities where Montgomery Ward Stores have been established.

"Altogether the company employs some 65,000 to 70,000 workers and serves many millions of customers. What the total effects on the company's business throughout the country would be if the Chicago House and the other units were closed down, no one can say. But the history of industrial conflicts indicates that strikes against an employer in a central locality may end by involving portions of the employer's establishments elsewhere, and it seems to us that the probabilities are in favor of the spreading of strife in the company's units beyond the confines of Chicago, though how far and to what extent, no one can prophesy.

"But the most important question is not what effect a strike in Chicago would have on the company's business there and elsewhere, but what effect it would have on industrial relations generally, and particularly on industrial relations in plants directly producing or distributing war materials. If 5,500 workers of Montgomery Ward may properly strike in Chicago for higher wages and union security—the chief issues in this dispute—it seems to us almost certain that other workers in other establishments would feel that they should have the same right, and that once a strike of the dimensions which are here threatened, against an employer as well known as Montgomery Ward, and in an area as highly industrialized as Chicago, were allowed to take place on the theory that this Board lacked authority to deal with the dispute, a fire would be started which before very long might turn into a conflagration.

"We do not think that the workers, or the general public for that matter, would grasp clearly the distinction which the company seeks to make between concerns producing or distributing war materials and those producing or distributing nonwar materials. We do not think that it would be possible as a practical matter, to have one part of industry free to indulge in strikes and lock-outs and another part bound to submit their disputes to this Board and to forego strikes and lock-outs.

"We do not suggest to the Board that every dispute, however small or isolated, concerns the national policy or properly comes under the Board's jurisdiction. Necessarily a selection must be made between those whose scope and location and probable effects are such as to threaten the public interest in the midst of war, and those which are of only incidental significance. Their selection, under the terms of the Executive Order, is normally made in the first instance by the Secretary of Labor. When a dispute is certified to this Board, it means that in the judgment of the Secretary of Labor, the dispute is one which, in the words of the Executive Order, 'might interrupt work which contributes to the effective prosecution of the war.'

"The words of the President's order ought not to be given a technical construction. The cases before this Board are not lawsuits. They are living situations charged with emotion and potentiality of conflict, and they have to be considered

in all their ramifications and in the light of the history of industrial controversies and the needs of the hour. If there is any doubt in a particular case, that doubt ought to be resolved in favor of keeping the peace, for this nation cannot prosecute a war for its survival in the midst of internal dissention and disruption.

"The Panel has unanimously concluded that if the threatened strike of the Montgomery Ward workers in Chicago were allowed to occur, its probable effects, both immediately and in the long run, on work contributing to the effective prosecution of the war would be sufficiently serious to warrant the Board's taking jurisdiction. And we, therefore, recommend the entry of an order to that effect by the Board, and its transmission to the parties."

As is so clearly indicated by the Panel's Report, there can be no doubt about the fact that the Montgomery Ward and Company is one of the great and very important business organizations of America. Its sphere of commercial and industrial influence is nation-wide. Any industrial dispute which threatens continuity of its operations is bound to affect the economy of the country in many detrimental ways including injury to the convenience and interests of the consuming public.

It is a very serious matter in time of peace when great business concerns and powerful unions such as those involved in this case exercise their right to settle their industrial disputes by resorting to the use of economic force. The general public usually pays a considerable price whenever the parties resort to strikes and lock-outs. Nevertheless, it is probably true that over the years the freedom to strike and lock-out has produced more social economic gains for the country than losses. In any event it is a deep-rooted "freedom of action" in our American society, but it is one which both labor and industry as well as the great majority of citizens generally recognize must be curtailed during times of war. Thus, in time of war, it is the duty and obligation of a war government to prevent the exercise of rights and privileges which threaten to interfere with the successful prosecution of the war.

Whenever possible, it is very much to be desired that the disputants themselves should reach a mutual agreement as to the manner and extent to which their peacetime rights should be modified during a war period. Thus, as history will undoubtedly record, great credit is due American industry and labor for the agreement entered into with the President that all labor disputes shall be settled by peaceful means for the duration of the war. To that end the National War Labor Board was created and given final jurisdiction over disputes which might interrupt work which contributes to the effective prosecution of the war.

It is to be noted that the national understanding with the President agreed to by representatives of labor and industry covers all labor disputes. It is also to be noted that the question of determining what disputes may interrupt work which contributes to the effective prosecution of the war is left to the judgment and discretion of the War Labor Board. Such a procedure is highly to be desired because obviously the question of determining the extent to which a given labor dispute might interrupt work which contributes to the effective prosecution of the war is a question of fact. Such a question of fact can be determined best by that agency of the government which is entrusted with the carrying out of the agreement that labor disputes shall be settled by peaceful means for the duration of the war.

The War Labor Board appreciates the fact that the line of demarcation between so-called labor disputes which do not affect the prosecution of the war and those which do, is not a clear and definite one existing between fixed knowns. Very good arguments can be made in support of the proposition that any labor dispute no matter how minor in nature is most certain, at least in some degree, to register a detrimental effect upon the war effort. There unquestionably is a general acceptance on the part of patriotic Americans, that all strikes and lock-outs in all industries to all degrees should be considered out for the duration of the war, and the differences between the disputants should be settled by the peaceful procedures of mediation, conciliation, and arbitration.

The instant case is not the first one in which the War Labor Board has passed upon the question of its jurisdiction over a given dispute. In fact, it has ruled on the issue so many times to date that the pattern of its rulings on jurisdiction has become very clear. It is the position of the Board that the question of its jurisdiction over a given labor dispute should rest entirely upon the facts of that case. Hence the Board has not failed in any case to make a very careful study of the nature of the business concerned, the source and destination of the goods produced or sold, the use made of the products insofar as the war effort is concerned, the influence of the dispute upon the economic area in which it arises, the effect of

the dispute upon manpower problems of the nation if a strike should occur, and the importance to the war economy of the country of maintaining a continuous operation of the business uninterrupted by a strike or a lock-out. Among the many factors considered by the Board in determining the question as to its jurisdiction in a given case, the Board invariably views the controversy from the standpoint of its effect on civilian morale. It gives weight to the needs of war workers who may be served by the industry or business, as well as to the paramount consideration of the war needs of the country at large.

It should also be said that the War Labor Board has taken the position that any labor dispute which may properly be adjudged a "major dispute" that is one which in case of a strike or lock-out is bound to directly affect not only a large number of workers involved in it, but also will affect detrimentally both directly and indirectly, the daily lives of a large number of people, is one which in light of war conditions falls under the jurisdiction of the Board.

The decisions of the Board show its position that the question as to what disputes do or do not "interrupt work which contributes to the effective prosecution of the war" is not one which can be determined by the application of some hard and fast rule. The cases differ one from another in many respects, and, hence, the problem becomes one of balancing interests and passing judgment upon degrees of effects which the various disputes have upon the war effort.

In case No. 21 involving a dispute between the Hotel Employers Association of San Francisco, California, and the Hotel Unions, the question of jurisdiction of the Board was raised. In taking jurisdiction of that case the Board stated in a release to the Public:

The Board assumes jurisdiction of the strike on condition that the picket lines be withdrawn because in the opinion of the Board the significance of this particular case justifies the use of the Board's good offices in finally determining the dispute.

The potentialities inherent in this particular dispute, the effects of the dispute upon civilian morale in a war port and the desirability in the interests of the public of settling the dispute in accordance with the national agreement that there shall be no strikes or lock-outs, are the controlling reasons for the Board's taking jurisdiction of the case.

In Case No. 16 in the matter of the Federated Fishing Boats of New England and New York, Inc., and the Atlantic Fishermen's Union, the Board took jurisdiction over a dispute arising out of the failure of the parties to agree as to who should pay for the cost of an insurance policy for the fishermen while engaged in commercial fishing. In taking jurisdiction of the case, the Board recognized the importance of continuing the fishing operations uninterrupted by a strike or lock-out because of the importance of fish as a food and as a source for certain vitamins and drugs. In its decision on the case at the time its jurisdiction was challenged, the Board stated in part:

* * * The government and the people of America have the right to expect all employers and all labor organizations to cooperate fully with the national understanding which was entered into by labor and employer representatives at the recent Presidential conference in which it was agreed that labor disputes for the duration of the war would be settled by peaceful means under the jurisdiction, if necessary, of the National War Labor Board rather than by resort to economic force * * *

* * * This country is at war, and the events in that war to date make clear that we cannot condone the conduct of any employer or labor group in America that places its selfish welfare above the interest of the country. * * *

In Case No. 48, involving a controversy between the Toledo, Peoria and Western Railroad Company and certain Railroad Brotherhoods, the Company challenged the jurisdiction of the War Labor Board and refused to abide by a decision of the Board to arbitrate its dispute with the Brotherhoods. As a result of its continued defiance, it became necessary for the government to seize and operate the railroad.

In passing upon the question as to its jurisdiction in the case, the Board decided that although the railroad was only a small one of a little more than 200 miles in length, nevertheless, a maximum use of its facilities was essential to the successful prosecution of the war, and the then existing labor dispute was preventing a maximum use of the transportation facilities of the road. The Board pointed out that under the facts and circumstances of the case, such a private quarrel between the Company and the Union could not be allowed to continue in the midst of a total war between the Axis Powers and the United Nations, involving the future of the United States and the future of freedom in the world.

The Board said: "No labor union, no corporation, no special or private interest whatsoever, can be allowed by the government of the people to break down a national agreement of business and labor sponsored by the Government for the peaceful settlement of labor disputes."

In Case No. 35 in the matter of the Inland Steel Company and the Steel Workers Organizing Committee, the Board ruled on its jurisdiction in the following language:

In Case No. 35, Inland Steel Company and the Steel Workers Organizing Committee, CIO, under the Executive Order, this Board has jurisdiction to consider all labor disputes which might interrupt work which contributes to the effective prosecution of the war, including labor disputes as to union status such as the one raised in this particular case.

By this decision in the Steel case the Board made clear that it would take jurisdiction over so-called union security or union status issues which are also involved in the instant case.

In Case No. 91, the Board took jurisdiction over a dispute which arose in New Orleans between the New Orleans Laundrymen's Club and certain unions. Although there was some showing in the case that the laundries served members of the armed forces camped in that area, the War Labor Board rested its jurisdiction primarily upon the ramifying effects which a strike of a large number of laundry employees in New Orleans would have upon the economic life of that area. It recognized the civilian population would be greatly inconvenienced by laundries shut down with resulting negative effects on morale. There would follow an attempt to employ other workers in order to break the strike with the danger that the whole affair might very well develop into a very serious situation inimical to the war effort.

In Case No. 7, involving a dispute between the Pacific Fruit and Produce Company and the Fruit and Vegetable Packers and Warehousemen's Union, the Board took jurisdiction because in its opinion the controversy not only endangered the preservation of quantities of perishable fruit needed by the consuming public, but the record showed that the dispute had spread its influence to many communities in the country with the result that boycotts were interfering with the movement of truckloads and cars of apples.

The afore-mentioned cases are only a few which illustrate the Board's position upon this problem of jurisdiction. It is a problem which cannot be resolved by resorting to strained legalistic or tortured interpretations of the language of the President's Executive Order of January 12, 1942. There is no room for doubt in the minds of reasonable men as to what the leaders of American industry and labor intended when they entered into the understanding with the President that labor disputes should be settled by peaceful means for the duration of the war. The problem of resolving the question of jurisdiction over any case which comes before the Board necessitates by its very nature a common-sense approach on the part of the War Labor Board to the end of satisfying itself by clear evidence as to whether or not the given dispute falls within the spirit and meaning of the language of the Executive Order of January 12, 1942.

These are days when the government must act in the interests of maintaining to the maximum extent possible a smooth-working war economy uninterrupted by "industrial civil wars" within our domestic economy. We cannot win this war, at least without an unnecessary loss of men, if as a nation we permit employers and labor organizations to disrupt our war effort by strikes and lock-outs. This particular dispute involves so many employees, and would affect the life of a very important industrial center to such a degree, that there is no doubt whatever in the minds of the members of the Board that the dispute falls within the jurisdiction of the Board.

The fallacy of the position on jurisdiction taken by the Montgomery Ward Company before the Panel of the Board seems clear if one follows it to its logical conclusion. What the position of the Company amounts to in fact is that it believes it should be allowed in these times to fight out with the labor organizations in its plants its differences with those organizations over such issues as wages, conditions of employment, union security, and arbitration machinery. It says in effect that because it has been the long-established policy of the Company in peacetimes not to agree to any form of arbitration of its differences with labor unions, but to retain to itself the whole determination of all such questions within its own discretion, therefore, it intends to insist upon the same privileges and rights during wartime.

The Board wishes to call the attention of the Company to the fact that it is one thing for a long-suffering and patient public to stand by during peacetimes

while American employers and labor unions settle their differences by contests of economic force in the form of lockouts and strikes, but it is quite another thing to expect the American public or its government, faced with the vital task of winning this war, to stand by while the Montgomery Ward Company, or any other important business concern, carries on a fight with labor under the guise that it has the right to do so because the fight doesn't affect the prosecution of the war.

It requires little argument to satisfy the great body of American citizens that any labor dispute which is likely to result in several thousand employees going out on strike in such a vital industrial center as Chicago is a dispute which is bound to affect the prosecution of the war in a multitude of ways as was so clearly pointed out by the report of the Panel in this case. Likewise it would not be difficult for the American people to fix the responsibility for such a strike in case it should occur if the Montgomery Ward Company should force such a strike by refusing to accede to the jurisdiction of the War Labor Board. It is also unnecessary to argue the point that in such an event the American people would expect their Government to take whatever steps might be necessary to carry out the national understanding that labor disputes of the nature of the one in this case should be settled by peaceful procedures. It should be recognized by all concerned that the jurisdiction of the National War Labor Board stems from the War Powers of the President.

The National War Labor Board is very conscious of the great trust imposed upon it and of its obligation to do all in its power to secure the willing cooperation of the parties involved in the disputes that come before it. It urges the parties to remember that, in this war, the interests of all groups within our country, labor, farmers, employers, professional people, Government officials, yes, all American citizens without exception, are mutual interests inseparable and inextricably entwined one with another.

We must all be willing to do a good many things that many of us undoubtedly said before this country entered into the war we would never do or agree to do. The Board appreciates the fact that prior to the war many American employers held views similar to those which have been announced by the Montgomery Ward Company in regard to settling labor disputes with their employees. Likewise, the Board appreciates the fact that many American unions prior to the war have strongly opposed some of the procedures which the Board, acting under the national industry-labor agreement and the Executive Order of January 12, 1942, has followed in settling wartime labor disputes. The Board does not question the right of American employers and unions during times of peace to take a stand in defense of some principle of industrial relations which they consider fundamental and to fight for that principle even though it may result in great costs to the industry or to the union. The right to follow such a course of economic action constitutes one of the freedoms of our democratic form of government. However, such freedom of action has now been voluntarily surrendered because its exercise during a time of war would threaten the existence of the very democratic society with the freedoms which the war is fought to protect.

During times of peace any employer is free to say in this fight with the Union, "I prefer to close out my business—yes, lose every dollar I have in it—rather than to yield to what I think is an unreasonable demand on the part of this union." There are many examples of industrial struggles in this country during recent years in which American employers have said just about that with varying results. In some instances employers who have taken such an uncompromising position have won their fights with labor at least for a time but with varying costs. In other instances they have paid the penalty of financial ruin for defending what they considered to be a "fundamental principle." The spirit of "rugged individualism" shown by many of the leaders of American industry in their clashes with labor, especially during the past twenty years, has won the respect of many people. At least this has been true when the public has been satisfied that the employer tactics have been fair and free of abuses. Americans by and large enjoy a controversy. A "good industrial fight" put on by a hard-hitting individualist, be he employer or union leader, has been tolerated if not approved, by the public on the ground that such struggles are a part of our system of free enterprise and rugged individualism.

However, such a so-called policy of "rugged individualism" cannot be exercised without qualifications during wartimes. It certainly is not morally proper for an employer to take the position during wartimes that he will fight it out to the finish with labor even if he has to close down his business. In a very real sense every American business of any magnitude these days is vested with a public interest and employers, as well as unions, must expect and accept such curtailments of their freedom of action as may be necessary in the interests of the war program.

Thus, in this case the United States Government cannot permit the Montgomery Ward Company to follow a course of complete independence of action in settling this dispute. It cannot permit the Montgomery Ward Company to decide for itself as to whether or not this dispute or its business affects the prosecution of the war.

Let it be understood that the War Labor Board does not charge or mean to imply in this decision that the Montgomery Ward Company has failed in any way to date to cooperate with the Board in settling this dispute in accordance with the terms of the Executive Order of January 12, 1942. It certainly had the right to raise the issue of jurisdiction for final determination by the Board. Now that the Board has decided that issue by determining that it has jurisdiction of the dispute, it assumes and takes for granted that the Montgomery Ward Company will cooperate with the United States Government through the National War Labor Board to the end of settling this dispute by peaceful procedures at a very early date.

B. Issue as to Wages.

It is the decision of the War Labor Board that the procedure recommended by the Panel in its unanimous report for a further consideration of the wage issue should be approved. The Panel states:

At the hearing on June 24th the parties agreed that, if the Board ruled that it had jurisdiction, an adjourned hearing would be held before the Panel in Chicago on July 13th and that in the meantime an investigator should be appointed by the Board to study the whole wage question and to report his findings to the parties before the July 13th hearing for consideration thereof. It was further agreed that at such hearing each party would be free to offer additional evidence or argument with respect to the wage issue or any of the other issues in the case.

This agreement was made by the Company with the understanding that the position it had taken regarding the Board's jurisdiction was not thereby waived. Both the Company and the Union offered to cooperate with the investigator if one were appointed, and to assist him in obtaining the necessary information.

The Panel recommends that, if the question of the Board's jurisdiction is decided in the affirmative, an investigator should be appointed to study and report on the wage issue as described above.

In light of the foregoing recommendation of the Panel that a wage study should be prepared by an investigator of the Board to be submitted to the parties for consideration by them at a further hearing of the Panel to be held on July 13, 1942, the National War Labor Board has of this date appointed such an investigator under instructions to proceed forthwith to conduct such a wage study.

Decision by:

WAYNE L. MORSE.

NATIONAL WAR LABOR BOARD

Case No. 111-5353-HO

JANUARY 13, 1944

In the Matter of: Montgomery Ward and Company and United Mail Order, Warehouse, and Retail Employees, Local 20, C. I. O.

DIRECTIVE ORDER

By virtue of and pursuant to the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive Orders, Directives and Regulations issued under the Act of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders:

1. The terms and conditions of the contract between the parties effective December 8, 1942, shall continue to govern the relations between the parties for a period of 30 days from the date hereof.

2. If, within such 30-day period the parties by mutual agreement provide for the determination by the National Labor Relations Board of the question of employee representation or, failing agreement, if the union, within the said 30-day

period petitions the National Labor Relations Board for a determination of the question, the terms and conditions of the said contract shall be further extended and shall continue to govern the relations between the parties until the determination of the collective bargaining representative of the employees involved, or until the further order of this Board; provided, however, that if the union, having within the said period filed such a petition, thereafter fails to prosecute the same diligently the company may petition the Board to terminate or modify this order.

Representing the Public:

WILLIAM H. DAVIS.
GEORGE W. TAYLOR.

Representing Labor:

ROBERT J. WATT.
CARL J. SHIPLEY.

Representing Industry:

GEORGE H. MEADE.
Dissenting: JAMES TANHAM.

NATIONAL WAR LABOR BOARD

JANUARY 13, 1944.

Case No. 111-5353-HO

In the Matter of: Montgomery Ward and Company and United Mail Order, Warehouse, and Retail Employees, Local 20, C. I. O.

OPINION

In February 1942, the National Labor Relations Board certified the United Mail Order, Warehouse, and Retail Employees, Local 20, C. I. O., as the exclusive bargaining representative of the employees of Montgomery Ward and Company within the units designated as the Mail Order House Unit and the Retail Store Unit. The union was also recognized by the company, or certified by the National Labor Relations Board, as the representative of the company's employees within five other designated units. Negotiations subsequently begun for a contract broke down and the ensuing labor dispute was certified to the National Labor Board, pursuant to the provisions of Executive Order No. 9017, on June 2, 1942. The Board issued a directive order determining the dispute and a contract between the parties, which included the provisions of the Board's order, became finally effective on December 8, 1942, expiring on December 8, 1943. Upon the union's request that the parties undertake to negotiate a renewal agreement the company asserted that the union no longer represented a majority of the employees within the Mail Order House and Retail Store Units and it consequently refused to bargain with the union.

The resulting labor dispute was certified to this Board on December 6, 1943, pursuant to the provisions of the War Labor Disputes Act. The only issue presently in dispute is one of representation. On December 10, 1943, the Board requested the company and the union to show cause at a public hearing "why they should not consent to an election or card check to be held under the auspices of the National Labor Relations Board to determine the issue as to the union's majority status in the two units and pending the results of such election or check why the terms and conditions of the existing contract should not be extended.

The position of the company, at the public hearing held on December 16, was that the union represents only a small proportion of the employees within each unit and that the question of representation and the company's statutory obligation to bargain with the union is for the exclusive determination of the National Labor Relations Board. Pending such determination, it was asserted, the expired contract should not be extended since any order of this Board to that effect, requiring the company to continue to treat the union as the majority representative of the employees within the units, would be contrary to the National Labor Relations Act.

There is no present necessity to invoke the procedures of the National Labor Relations Act, alleged the union at the public hearing, since it could be demonstrated that the union still represents more than a majority of the employees within each of the units in question. But if the Board should require that the issue of representation be resolved by an election or card check under the auspices of the

National Labor Relations Board, the terms and conditions of the existing agreement should be extended pending final action by the National Labor Relations Board.

The contested question of representation is obviously not one for this Board to decide. We are required by the War Labor Disputes Act to leave such questions for the determination of the National Labor Relations Board. But courts have held that a National Labor Relations Board certification of exclusive bargaining representative is presumed to have continuing effect until changed by that Board. [See *Oughton et al. v. N. L. R. B.*, 118 F. (2d) 486 (C. C. A. 3rd, 1941), cert. den., 315 U. S. 797 (1942); *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72 (1940); *Brotherhood of Railway & Shipping Clerks et al. v. Virginian Railway Co.*, 125 F. (2d) 853, C. C. A. 4th, 1942; *N. L. R. B. v. Highland Park Manufacturing Co.*, 110 F. (2d) 632 (C. C. A. 4th, 1940)]. In the *Oughton* case this principle was described as "the rule of presumed continuity of representative status."

If, however, the Board should apply that rule without exception or condition and regardless of the date of certification or of any change in size, composition or character of the work force, we would, in effect, unlike the court decisions cited above, deprive employers of their only means of seeking a redetermination by the National Labor Relations Board of the representation question, namely, by refusing to bargain with a union which an employer claimed had lost its majority status. In the ensuing proceeding under Section 8 (5) of the National Labor Relations Act the representation question may, as we understand the practice of the National Labor Relations Board be determined.

There are consequently those cases where, since the date of certification by the National Labor Relations Board, such a major change in circumstance has occurred as to cast doubt upon the continued significance of the National Labor Relations Board certification. A bare assertion that a union, previously certified by the National Labor Relations Board, has lost its majority status will not, however, persuade the War Labor Board to deny to the union the benefits that attach to the certification. Substantial evidence must demonstrate in each case that events occurring since the National Labor Relations Board certification have been of so compelling a character that opportunity to seek a redetermination of the question should not be foreclosed.

In the instant case the union certification is 2 years old; there has been a great turn-over in the labor force since that time, more than a thousand of those who were in the company's employ at the time of the election now being in the armed forces. It is alleged that of the group of employees who selected the union as their representative in the mail order house in February 1942, only 28% now remain in the bargaining unit and this group constitutes less than 15% of the employees within the unit. In the Retail Store only 26% of the eligible employees who chose the union in February 1942 remain within the unit and this group constitutes, we are told, only 16% of those now employed in the unit. Moreover, it has been stated by the company that "less than 18% of the employees in the Mail Order House and less than 20% in the Retail Store" now have outstanding authorizations to the company to check off union dues.

The union, on the other hand, has pointed out that in November 1942 it delivered to the company a check-off list of about 3,700 members, and that as union members left the company's employ new employees joined the union with the result that during 1943 it has handed the company more than 10,000 check-off cards. Emphasis is also placed by the union on the fact that during the 15-day escape period provided for in the maintenance of membership clause ordered by the Board which took effect in December 1942 only 14 of the 3,700 employees who had signed check-off cards resigned from the union. For the month of November the union received from the company a check-off check for \$2,225.00 and for December a check for \$2,048.00. There are, in addition, says the union, 300 to 500 members who pay their dues directly.

The Board is not equipped, nor is it its function, as we have said, to determine whether the union has lost or retained its majority status. But it seems to us that under the circumstances of this case the Board should furnish the parties an opportunity to have the matter resolved by the National Labor Relations Board. This should be done either by consent of the parties or, failing agreement, by the union filing a petition for an election with the National Labor Relations Board within 30 days following the date of this Order.

While both parties appear willing to submit to an election or card check, we are not altogether clear from the discussion at the public hearing whether agreement can also be reached on the matter of appropriate bargaining units. If disagreement on this score should arise, it would need to be resolved by the National

Labor Relations Board on the union's petition. This question, too, the statute requires, must be left for decision by that Board.

Pending determination of the National Labor Relations Board, however, the terms and conditions of the contract just expired should continue to govern the relations between the parties. There are two compelling reasons for this action. We believe it necessary, in the first place, in order to avoid the unrest and conflict that would be bound to arise if, in an enterprise as large, important, and as centrally located as Montgomery Ward's Chicago store, the employees were suddenly to find themselves without a contract. Similar considerations have, in prior cases, induced the Board to take the same action. (Bituminous Coal Operators and United Mine Workers, Case No. 111-1284; New York-New Jersey Metropolitan Milk Distributors, Case No. 197; Westinghouse Air Brake Company, Case No. 111-1244-D; General Motors Corporation, Cases Nos. 125 and 128; Trucking Industry in 12 Midwestern States, Cases Nos. 4648 and 4448.)

Secondly, we think that, so far as possible, the *status quo* as of the date of contract termination should be preserved since the issue in question relates to the extent of union membership on that date. In the nature of things it was not possible to have the issue then and there decided. But surely, neither party should seek or obtain any advantage from the lapse of time attendant upon the orderly processes of this Board or the National Labor Relations Board. The necessary effects of a continued lapse of the contract would so disadvantage the union in the period from now until the holding of the election that failure to extend its provisions would, for all practical purposes, amount to prejudging the issue of representation. By extending the contract provisions the relative positions of the company, the union, and the employees, as they were when the contract terminated, are preserved until the representation issue has been determined by the proper governmental agency.

The company has asserted that such an order of the Board would be contrary to the National Labor Relations Act since the company would be required to treat a minority union as the exclusive representative of the employees within the units. This contention, of course, assumes the very fact in issue. While the evidence submitted may be sufficient to justify this Board in holding that the question ought to be referred to the National Labor Relations Board for determination, it is by no means sufficient to warrant the assumption that the 1942 certification has lost all significance. In the present state of the record, we are satisfied that it is "fair and reasonable" to continue in effect, until the National Labor Relations Board has acted, the terms and conditions of the agreement.

The company's fear that it would be guilty of an unfair labor practice if it continues, in the face of its doubt, to treat the union as a majority representative is, in the light of the court decisions cited above, unfounded. It should be particularly noted in this connection that during the entire contract period the union called upon the company to discharge only one employee under the maintenance of membership provision—a request which, it was stated at the hearing before us, had been refused by the company.

It is unnecessary to comment at length on the company's objection to the Board's jurisdiction. In view of the statement made during the public hearing by the company's representative, that the factual situation has not changed since the Board's decision in case No. 192, we need only refer to the opinion and the panel report in that case.

WILLIAM H. DAVIS, Chairman.

Mr. DAVIS. On the merits of the issues the same panel issued a unanimous report in two parts.

Let me interpolate there, gentlemen. When you get a unanimous report from our labor, industry and public members on a personal quarrel in a plant like this you can be pretty sure that the action of the Board is sound because these industry fellows were not born yesterday, and they are not gentle, little lambs. They are quite capable of protecting the rights and interests of industry. In this *Montgomery Ward* case, from the beginning, with that single exception of one newcomer to the Board, the industry members have voted with the public and the labor representatives unanimously.

Mr. CURTIS. Mr. Davis, you understand, of course, this committee is not attempting to inquire into the justness or accuracy of the War

Labor Board procedure, but only as to the remedy that was applied following the procedure.

Mr. DAVIS. Yes; I understood that from what the chairman said. The reason, if I should seem to be taking too much time, Mr. Curtis, is I do think these things cannot be judged in a vacuum. I do want the committee to know what the background of these things is.

On the merits of the issues the same panel issued a unanimous report in two parts. The first dated August 31, 1942, dealing with wages was unanimously adopted by the Board on September 5, 1942, and was accepted by both parties. The second part, dated October 18, 1942, dealt with the questions of union security, arbitration of employee grievances and seniority. This part of the panel's report was also unanimously adopted by the labor, industry and public members of the Board and on November 5, 1942 the Board issued a directive order providing for a maintenance of membership clause with a 15-day escape period, the arbitration of employee grievances concerning the application and interpretation of the contract and a limited seniority clause. By letter dated November 13, 1942, the company rejected this order but stated that it would comply if so directed by the President of the United States.

May I add to what I said to you, Mr. Curtis, this: As far as I am concerned, my point of view about this dispute is there is no occasion whatever in the activities of the War Labor Board to jeopardize our constitutional rights in the slightest particular. Nobody is more devoted than I am to those rights. I say that we are now a child of the Congress, since the act was passed. We are prepared to tell the Congress what our troubles are and to carry out the directives of Congress, whatever they may be. I only say this, that if the Congress has made, as we think it has, an adequate provision for these things, we can handle the ball. If it has not, then it should.

Well, we entered an order, and on November 13 the company rejected the order but said it would comply with the President's directive if the President directed it to do so.

The President wrote a letter on November 18 stating that he considered

such a course of action essential to the interests of our war effort

The company then sought to insert in its contract with the union the following statement:

The following provisions are not voluntarily agreed to by the company. In the company's opinion they are illegal and unsound. These provisions are copied verbatim from the War Labor Board's order of November 5, 1942, and are incorporated here on the company's part under duress and only because of the President of the United States as Commander in Chief in time of war has expressly ordered that they be included.

On December 8, 1942, another hearing was held in which the Board recognized the right of the company to state the conditions under which it was executing the agreement but unanimously rejected the clause suggested by the company and proposed instead that the agreement should be preceded by the following statement:

The following clauses are verbatim copies of clauses contained in the directive order of the National War Labor Board dated November 5, 1942, and are included after protest in compliance with the order of the President of the United States, as Commander in Chief in time of war, dated November 18, 1942.

The company, on December 10, 1942, again refused to comply and stated that it would do so only if directed by the President. On December 12, the President again directed the company to comply, whereupon on December 15, the company stated that it would "obey" the President's "order." The agreement was finally signed on December 18, to be effective for 1 year from December 8, 1942.

I have in the statement which I prepared, and I hardly see the need to read it all here, if I may, Mr. Chairman, be permitted to put it into the record, but in the statement I have reviewed rather carefully what happened before the Board as between the company and our industry members, Harry L. Derby, president of the American Cyanamide and Chemical Co., and Roger D. Lapham, then chairman of the Board of American-Hawaiian Steamship Co. and is now residing in San Francisco.

The CHAIRMAN. It may be put in the record.

(The text of the statement referred to is as follows:)

Let me [Mr. Davis] at this point call your attention to the views of two of the then industry members of the Board regarding the company's attitude. Their comments were occasioned by the advertisements published by the company on November 13, 1942, announcing its intention to defy the Board's order and on December 10 seeking to explain why it had failed to comply with the President's request as it had previously stated it would.

Mr. Harry L. Derby, president of the American Cyanamide & Chemical Co., president of the Manufacturing Chemists Association of the United States, and a former director of the National Association of Manufacturers was then one of the industry members of the Board. On December 8, 1942, at the hearing before the Board Mr. Derby stated:

"I have a statement, Mr. Chairman. I sat in this case and heard the evidence and I read the report very carefully, the report of the Panel. I also saw introduced here—which was not denied by the company—a letter which was submitted by the union and which was purported, and not refuted, to be a letter written by the management of the company to various of its foremen, and representatives in which it pointed out that steps had been taken to hinder or destroy this union.

"The reason that I voted for the imposition of a maintenance of membership clause in this case was that I believed that simple justice required that I do so, and if I had it to do over again, I would do the same thing.

"Now, I want to say this, that when this Board, constituted as it is on a tripartite basis, can't decide these things in the light of justice the way that we see it, without being subjected to untruthful attacks, then I say to you that this form of government is seriously jeopardized. I want to say this, that in my humble opinion Montgomery Ward has done the greatest disservice to industry and the private enterprise system of any concern in the United States, and I feel that just as strongly as I can.

"The ads that you put in the papers and broadcast Nation-wide were statements of untruth or half-truth and the statement that you make this morning, that you want to comply with the order of the President of the United States because Ward is so terrifically interested in doing that in time of war, doesn't square with the attitude that is expressed here today, and so far as I am concerned, I don't care whether Montgomery Ward thinks I represent the viewpoint of industry or not.

"When, as, and if any future companies come to this Board and the issue is as clearly drawn as it is in this case, I shall do what I believe simple justice requires, to see to it that the union is given the protection that I think it is entitled to in a case like this.

"Now, if it is the intent of Montgomery Ward to embarrass this Board and the President of the United States, that is all right. We can deal with that, and I have no doubt the President can deal with it. If that is the purpose of all this, taking up the time of this Board when we have such terrifically heavy burdens on our shoulders to carry in this time of war, if that is good citizenship, then perhaps I don't know good citizenship."

Mr. Roger D. Lapham, then chairman of the board of American-Hawaiian Steamship Co., vice president of the San Francisco Employers' Council, and,

like Mr. Derby, a former director of the United States Chamber of Commerce, had made the following statement at the hearing of December 8:

"Ward's has freedom of speech, and the industry members of this Board also have freedom of speech and they intend to use it to tell the truth and not a damn bunch of half-truths."

Mr. Lapham subsequently clarified this change in a letter addressed to Mr. Avery on December 24, 1942. Mr. Lapham's letter stated, in part:

"I recall spending a pleasant hour with you and Mr. Cyrus Ching in Washington some 18 months ago. It is, therefore, with much regret that I, as an industry member of the National War Labor Board, find myself in sharp disagreement with you, as the president of Montgomery Ward & Co. * * *

"I took no part in the discussion or in the decision leading to War Labor Board's directive order of November 5, inasmuch as I was not in Washington during the month of November. Having, however, studied the record in your case, I am certain that had I been here, I would have joined the other industry members of the War Labor Board in the unanimous decision that was made.

"I have read your letter addressed to the War Labor Board on November 13 as well as the statement read to the War Labor Board on December 8. Both letter and statement have received wide publicity in the form of newspaper advertisements and copies of both have, I understand, been mailed to every stockholder of Wards.

"With respect to the letter and statement I make these comments:

"Both your letter and statement were most misleading to anyone not familiar with the actions of the War Labor Board which prompted them. It is regrettable, when informing your stockholders, that you neglected to give them a copy of the War Labor Board's directive order of November 5 to which you had registered objection.

"You also failed to inform your stockholders of the substitute clause offered by the War Labor Board on December 8 in place of the clause you insisted upon. (I shall refer to this in detail subsequently).

"You thus gave a very one-sided picture both to your stockholders and to the general public as well.

"The following statement in your November 13 letter I classify as misleading:

"The Board further ordered a form of compulsory arbitration for Wards. Wards is not opposed to voluntary arbitration. However, Ward's management should not, as demanded by the Board, abandon responsibilities which have been vested in it by the owners of the corporation, and so surrender to outside arbitrators the final decision on all matters which the union may wish to treat as grievances."

"Reverting to paragraph 12 of this letter, I invite your attention to the final clause of section 2 of the War Labor Board's directive order of November 5, which reads as follows:

"Grievances, within the meaning of the grievance procedure, shall consist only of disputes about working conditions, about the interpretation and application of particular clauses of this agreement, and about alleged violations of the agreement, including the treatment of employees. Changes in general business practice, the opening or closing of new units, the choice of personnel (subject, however, to the seniority provision), the choice of merchandise to be sold, or other business questions of a like nature not having to do directly and primarily with the day-to-day life of the employees and their relations with their supervisors, shall not be the subject of grievances and shall not be arbitrable. If any question arises as to whether a particular dispute is or is not a grievance within the meaning of these provisions, the question may be taken up through the grievance procedure and determined if necessary by arbitration."

"It is unfortunate that you failed to inform your stockholders as well as the general public that the November 5 directive order of War Labor Board distinctly classified subjects that were arbitrable and those that were not.

"On November 13 you said you would accept the orders of the President of the United States as Commander in Chief in time of war; on November 18 the President directed you to do so; on November 21 you said you would promptly comply; on December 8 you refused compliance unless a clause of your own wording was inserted in the agreement. This I hold to be a breach of faith; for by your first letter you have committed yourself to a certain course of action and failure to live up to that commitment, in spirit if not in actual fact, was, I repeat, bad faith. That was my opinion on December 8, and I have had no reason to change it since then."

Mr. DAVIS. The contract was signed, after the President had requested the company to sign it, and it expired a year later, on December 8, 1943. A month before its expiration the company notified the union that it would not recognize the union or negotiate a renewal of the agreement because it did not think that the union any longer represented a majority of its employees in the warehouse and retail store. The ensuing labor dispute was certified to the Board on December 6, 1943, under section 7 of the War Labor Disputes Act of June 25, 1943, which provides that—

Whenever the United States Conciliation Service certifies that a labor dispute exists which may lead to substantial interference with the war effort—

The Board's jurisdiction shall attach. The Conciliation Service so certified in this case.

On December 16, a public hearing, as the statute requires, was held before the Board. The question before us was how to bridge the gap between the termination of the contract and a resolution of the representation question.

I may interpolate there, we had had the same question up in the coal cases, where the President himself directed the continuation for the interim period of the terms and conditions of the existing contract, with the provision that when the new contract was worked out it would be retroactive, and that is a policy that had many precedents before the President acted in the coal case, and we have followed it ever since. In fact, an agency such as ours could hardly follow any other.

So our question was: What sensible and fair order could we make that would provide for a speedy determination of that question but would not prejudice either of the parties or the stability of labor relations at the establishment? Courts of equity call it preserving the status quo. On January 13, 1944, the Board directed that the terms and conditions of the contract should be extended without change for a period of 30 days, provided that the union should, within that time, commence a proceeding before the National Labor Relations Board in order to resolve any doubt concerning its representative status.

In doing that, gentlemen, we went one step further than we have ever done in any other case in favor of the company. I am not sure that we did not go a step further than the law allows. But what we said to the union there—mind you, it was a certified union, with no rival union—we said to them, "We must get this thing settled now. We cannot wait for legal proceedings for 2 or 3 years. The company has raised some reasonable doubt about whether you remain a representative of the majority." That is what we said to the union. If anything we did was without authority of law, it was that. We said to the union, "You must apply for an election right away. You must test this thing again, because we are trying to satisfy the company and remove this obstacle which might have been drawn out for three or four years in the courts."

The Board's order was calculated, you will observe, to furnish to the employees an opportunity to say whether or not they desired any longer to be represented by the union and to insure against the industrial chaos that invariably follows the sudden breaking off of contractual relations. If there was any criticism of it possible,

gentlemen, it was that we went too far in favor of the company, because under the law and the practice of the courts the certification, once made, is presumed to be continued until it is changed by action of the parties. In the opinion accompanying that order the Board pointed out:

By extending the contract provisions the relative positions of the company, the union and the employees as they were when the contract terminated are preserved until the representation issue has been determined by the proper governmental agency.

In other words, it was an order preserving the status quo until the election which Montgomery Ward asked for, which, under the law, they could not immediately get, and we provided them an opportunity to hold the election to test the question that they raised.

It has been inquired why an election by the National Labor Relations Board was not held sooner, possibly in November when the company refused to recognize the union. Under the National Labor Relations Act and the regulations of the National Labor Relations Board, the company, as you know, had no right to secure an election, nor was the union under any statutory duty to seek another election. Until the matter came to the War Labor Board in accordance with the provisions of the War Labor Disputes Act, the Board, of course, could take no action. When the case did come before the Board, we sought to have the representation issue resolved as speedily as possible. This we did by conditioning the extension of the contract beyond the original 30-day period on the union's commencing a proceeding before the National Labor Relations Board. The union commenced such a proceeding within the 30-day period and from that point on the National Labor Relations Board followed its normal procedure.

Please note that the Board's order did not require the company to sign any extension agreement; it did not call for any change in the relations between the company and its employees; it did not, in fact, call for any affirmative action on the part of the company. It merely provided that the terms and conditions under which the company and its employees had worked for the preceding 12 months should continue to govern their relations until the National Labor Relations Board had had a chance to resolve the representation issue. This followed sound industrial practice in seeking to bridge over what would otherwise be a period of disturbed industrial relations. It is a common practice in American industry, the value of which employers and unions have discovered from actual experience.

But Montgomery Ward notified the Board that it would not comply with this order. On March 29, 1944, the Board held another public hearing and found that the union had complied with the Board's order but that the company had canceled the contract, discontinued the voluntary check-off, although the employees had not revoked their individual authorizations, ignored the grievance procedure and arbitration provisions, and succeeded in effectively destroying the status quo, which the Board had sought to preserve. On April 5 the Board unanimously directed the company to restore the status quo in compliance with the order of January 13 and to maintain it until the representation issue had been finally determined. The company promptly rejected this order, too.

On April 12, 1944, the employees in the Chicago plant went out on strike. Let me say to the committee that that is the first strike that has occurred in America since the no-strike plan started in which the War Labor Board was helpless to act. We just could not order these men back to work for an employer who was defying our order, and I say to you, and I say it deliberately, if you are going to preserve this system of minimizing interruption of production by strikes in this war period to win the war you have got to preserve the whole of it. I say that with the greatest solemnity, because I know what I am talking about. You just cannot have some obey these orders and other people disobey them.

On April 12, 1944, the employees in the Chicago plant went out on strike, as I say. We could not do anything about it. We could not order them back to work for an employer that had defied the Board and had refused to maintain the status long enough to give them a chance to vote. Advice from the Board's representatives in Chicago indicated grave and immediate danger—and I say this with the greatest solemnity—that the strike would spread not only to other plants and facilities of the company but to plants and facilities of other companies in and out of the Chicago area. The epidemic potentialities of the strike were manifest before it ended at the President's request. On April 13, 1944, the Board, by unanimous vote, referred the matter to the President.

I could go into that in detail, but I ask you gentlemen to believe me when I say, as chairman of the War Labor Board, that this matter of controlling strikes is a very nicely balanced thing, that human relations are involved, human passions. We have got a system that is all right, if we keep at it day after day and day after day, but you cannot work it unless we are backed up and permitted to work it in every case.

Mr. DEWEY. I beg your pardon for interrupting you, but I just would like to draw attention again to the fact that we are trying to get down to the basic law, and I shall probably move to strike from the record certain statements which were admitted and which were not read, and therefore I did not know what they were when they were admitted into the record. I consider them irrelevant and having no bearing on the issue here. Anything that has to do with the actual development of the seizure, the legality, I think is germane to this resolution, and we are all interested in obtaining the background as to what was going on in the minds of the Board. It has been very active, but there are certain things that are now entering into the record and that were put into the record that I do not think have any bearing on that, that are irrelevant. I therefore felt at this moment I would like to draw attention to that for later consideration, and also to some of the statements of the witness. We are profoundly interested in all the legal aspects.

The CHAIRMAN. May I say, Mr. Davis, the statement made by the gentleman from Illinois is a matter of consideration in executive session of the committee. My own feeling is we ought to have all the information we can get this controversy in order to properly weigh it. Go ahead.

Mr. DAVIS. Thank you, sir.

In connection with the adequacy of the Board's procedures in this case and the fairness of its actions I think it a fact worth emphasizing that of the 16 different industry members of the Board who

participated in the several decisions that were rendered, only one dissented, on one occasion.

Now, it is important, I think, to emphasize that in acting on this dispute the Board followed its normal practice in accordance with the duty imposed upon it by Congress since the passage of the War Labor Disputes Act. Here, perhaps, Mr. Dewey, I am getting into the field that you are more interested in, and that is the Executive orders under the statute, and the relations of the Board's activities to them, in this case. No exceptional or unusual action was taken either in assuming jurisdiction over the dispute or in the method by which the Board handled it.

Let me give you now a very brief analysis of the Board's jurisdiction under the Executive order by which it was established and the act of Congress which confirmed and strengthened its powers and duties:

1. The Board was created by Executive Order 9017 pursuant to the conference called by the President on December 17, 1941, of outstanding representatives of labor and industry (I have the names and affiliations of these men available if the committee desires it). General agreement was reached at that conference on three points:

(a) That there should be no strikes or lock-outs for the duration of the war;

(b) That all labor disputes should be settled by peaceful means; and

(c) That the President should set up a tripartite War Labor Board to handle these disputes.

2. Executive Order No. 9017 was issued by the President on January 12, 1942, as a result of that labor-industry conference. After reciting the three basic points of agreement

that all labor disputes shall be settled by peaceful means and that a National War Labor Board shall be established for the peaceful adjustments of such disputes

the order set up the Board and defined its procedure for settling all disputes

which might interrupt work which contributes to the effective prosecution of the war.

3. From January 12, 1942, through June 25, 1943, the date the War Labor Disputes Act became law, the Board issued a series of decisions making plain its understanding that its jurisdiction could not be confined to labor disputes in plants manufacturing war materials, but that it had to extend to any labor dispute which, in the judgment of the Board, might affect the war effort. The reasons for this unanimous conclusion of the Board can best be illustrated by reference to a dispute which originated in several grocery stores in Pontiac, Mich.

In July 1942, as a result of a dispute involving these grocery stores in Pontiac, Mich., a picket line was set up around the stores. Seeking to gain support from other unions in the area, the picket line was extended to several manufacturing plants. Among the plants affected were the General Motors Pontiac Division and the Baldwin Rubber Co., both of which were engaged almost exclusively in war production. Some 10,000 employees in these two plants refused to cross the grocery store picket line. Fortunately, the strikes were all ended on the evening of the day they began when, through efforts of the War Labor Board, the union leaders and the Governor of Michigan, the parties to the grocery dispute, agreed to arbitrate the issues, the picket line was removed, and work at the plants was immediately resumed.

The point I want to make, and which this case illustrates—is that there is no way of confining disputes within rigidly fixed physical boundaries, and consequently, there is no rule of thumb which would justify the Board in assuming that if the dispute does not directly involve a war plant, it will not affect the war effort.

It is the old story: "For want of a nail the shoe was lost; for the want of the shoe the horse was lost; for the want of the horse the rider was lost; for the want of the rider the battle was lost." You cannot tell where these things will end up.

4. There were, of course, certain types of disputes excluded from the Board's jurisdiction—those subject to the Railway Labor Act, to the National Labor Relations Act and to contract arbitration. In addition, disputes had first to go through collective bargaining and the United States Conciliation Service before they reached the Board. This screening process meant that in 1942 only 10 percent of the disputes that reached the Conciliation Service ultimately came to the Board and in 1943 only some 25 percent.

5. In summary, at the time of the passage of the War Labor Disputes Act, the Board's jurisdiction extended to cases (a) which could not be handled under particular statutes, (b) could not be settled by collective bargaining or established procedures, (c) could not be resolved by the United States Conciliation Service, and (d) were certified by the United States Conciliation Service as disputes which threaten substantial interference with the war effort.

The disputes that remained, while relatively few in number, were of a character so stubborn that they came to be regarded by the Board as constituting by their very nature the type of dispute "which might interrupt work which contributes to the effective prosecution of the war" within the meaning of Executive Order 9017 as extended by Executive Order 9250 "to all industries and all employees."

6. That was the situation at the time Congress adopted the War Labor Disputes Act. We studied the act, its language and its legislative history, with extreme care and came to the considered judgment that Congress did not intend to change but to confirm the Board's jurisdiction, and its then existing powers and practices. Here are the reasons:

(a) Section 7 (a) of the act takes the Board as a going enterprise whose existing functions Congress recognizes and is about to supplement. It reads in part:

The National War Labor Board, established by Executive Order Numbered 9017, dated January 12, 1942, in addition to all powers conferred on it by * * * any Executive order or regulation issued under the provisions of the Act of October 2, 1942, * * * shall have the following powers and duties * * *

(b) The description in section 7 (a) (1) of the type of dispute that is to come to the Board is, in substance, the same as that in Executive Order 9017.

Executive Order 9017.—"* * * labor disputes which might interrupt work which contributes to the effective prosecution of the war * * *"

Section 7 (a).—"* * * labor disputes which may lead to substantial interference with the war effort. * * *"

Under both the Executive order and the statute the Board's jurisdiction is defined not by a technical definition of manufacturing or production but by the effect that disputes may have upon the war effort. Both the order and the statute manifest a clear intention to rely, in this regard on the judgment of the Board.

(c) The plain reading of section 7 itself:

Whenever the United States Conciliation Service certifies that a labor dispute exists which may lead to substantial interference with the war effort * * *. If in the opinion of the Board a labor dispute has become so serious that it may lead to substantial interference with the war effort * * *.

That refers to our duties and functions again.

This language, I submit, contains no indication that only disputes arising in war plants shall be within the Board's jurisdiction. On the contrary, reliance is placed on the judgment of the United States Conciliation Service and on the opinion of the War Labor Board as to which disputes, regardless of their origin, "may lead" to interference with the war effort.

(d) The broad definition of "war contract" in section 2 (b), reveals that in adopting the War Labor Disputes Act, Congress was thinking of the entire national economy, thus indicating its intention to confirm the existing powers of the Board to deal with all disputes that threaten any of the economic operations involved in maintaining an adequate supply of goods for the armed forces and the civilian economy. Section 2 (b) defines "war contract" in this language:

(3) a contract, whether or not with the United States, for the production, manufacture, construction, reconstruction, installation, maintenance, storage, repair, mining or transportation of—

- (A) any weapon, munition, aircraft, vessel or boat;
- (B) any building, structure or facility;
- (C) any machinery, tool, material, supply article or commodity or
- (D) and component material or part of or equipment for any article described in subparagraph (A), (B), or (C);

(e) Congress must be presumed to have been aware of the Board's decisions, all of which were released to the public and published in Commerce Clearinghouse reports, Labor Relations Reporter, War Labor Reports, and other services and many of which were widely commented on in the press.

Knowing of the Board's own conviction of the necessity of settling all disputes peacefully and of the indivisibility of the no-strike, no-lockout agreement, Congress, if it had intended to change the Board's consistent interpretation of its powers, would, it seemed to us, have explicitly so provided. Said the Supreme Court of the United States in a similar situation:

The failure of Congress to alter or amend the section notwithstanding this consistent construction by the department charged with its enforcement creates a presumption in favor of the administrative interpretation to which we should give great weight (*Costanzo v. Tillinghast* (1943) 287 U. S. 341, 345).

(f) Any construction of the statute other than the one adopted by the Board would need to be based on the assumption that Congress intended to exclude from the no-strike pledge all segments of our economy not engaged in manufacturing or producing war goods. That would include the transportation and public utility industries with 3,700,000 employees (except those subject to the Railway Labor Act), the construction industry with 800,000, wholesale and retail trades with 6,800,000, and finance service, and miscellaneous with 4,300,000. Were we to say that the 15.5 million people engaged in these industries have no relation to the war effort? Could we, in discharging the duty imposed upon us by Congress, assume responsibility for leaving unsettled labor disputes in these fields, permitting

them to result in disruptive strikes? How long would the workers in an aircraft plant get along without wholesale-retail trade facilities, with no laundry or banking service, with local bus transportation subject to tie up by strike? Doesn't our common sense tell us that Congress could not have intended such a dubious result?

Finally, it is our belief that Congress did not intend that those engaged directly in the war effort should be required to substitute during the war period the judgment of the tripartite War Labor Board for their peacetime freedom of strike or lock-out action while others, claiming no participation in the war effort, would be completely free to strike or lock-out when they saw fit regardless of the effects on the all-out national prosecution of the war.

There will always be, I suppose, some people in both industry and labor, who conveniently divide the country into two groups, one comprised of those who are taking part in the war effort, the other of those who are sitting back disavowing any relation to or participation in the war and who insist on pursuing their peacetime habits without interferences. This is a concept, I confess, extremely difficult for me to grasp. The joint resolution of Congress of December 11, 1941, declaring war against Germany provides that—

to bring the conflict to a successful termination, all of the resources of the country are hereby pledged by the Congress of the United States.

I do not understand that particular types of the country's resources, whether of goods or of manpower, were excluded from this pledge. Nor would it appear to me that only the soldiers, sailors, and marines and those who are engaged in manufacturing war equipment are in the fight and that to all others, the war is no more than a minor inconvenience which is not to interfere with their accustomed peacetime habits.

If that is what Congress intended to tell the War Labor Board in defining its jurisdiction, we shall, of course, modify our practice. But we do not understand that Congress has made this distinction. We have unanimously interpreted the War Labor Disputes Act as evidencing in Congress the same opinion we have come to out of our own experience, that when a labor dispute has not been settled by collective bargaining, when there are no statutory means of settling it, when the United States Conciliation Service has likewise failed to bring about an agreement, such a stubborn dispute, if not peacefully resolved, is bound to make trouble whether it arises in a tank plant, in the distribution industry, in the service trades, or in retail merchandising. That has been our consistent position since January 12, 1942; Congress was well aware of it; Congress, we believe, intended to leave it unchanged.

Until Congress tells us clearly and explicitly that there are segments of our economy, men and women, trades and skills that are not in the war, we cannot accept any such artificial limitation on our plain wartime duty to endeavor to preserve industrial peace in America.

Now, gentlemen, there is one further subject that I think should be discussed, and that is this matter of court enforcement and review, because there is a great deal of confusion about it so far as it reflects the War Labor Board's view. It concerns court review of the fairness and equity of the Board's decision about which there appears to be

a good deal of misunderstanding. First, I should like to give you the facts regarding pending lawsuits brought by Montgomery Ward Co. against the Board. Four such suits are pending in the United States District Court for the District of Columbia, one is on special appeal to the district court of appeals. As you know, in these suits, the Board is represented by the Attorney General. In each of them, the Attorney General has defended on the ground that Congress, aware of the emergency nature of the Board's work and of the record of voluntary acceptance of the Board's orders by employers and employees, intentionally refrained from providing for either court review or court enforcement of those orders.

May I interpolate there, perhaps unnecessarily to this committee which is informed about such things, that here we are talking about the court enforcement of our orders. There is plenty of freedom to the American citizen, where an act of the Government seems to him to impinge upon his constitutional rights, to proceed to the courts on that ground, and I am not talking about that. If our orders, as Congress has determined so far, are not to be reviewed by the courts that does not mean that a man's constitutional liberties are infringed, that he cannot go into a court and say so. I am just talking here about whether you are going to have a judicial review and enforcement on the merits of our orders in detail or not. Congress decided not, and we went ahead on that basis.

The legislative history of the War Labor Disputes Act makes this very clear. It was Congress that determined—and I think wisely—that compliance with the Board's orders should be left on the same basis as it had been for 18 months prior to the passage of the statute—a basis generally accepted on which the Board has successfully handled more than 6,750 labor disputes affecting nearly 8,500,000 workers.

I base my statement regarding the intention of Congress on the clear and unequivocal legislative history of the War Labor Disputes Act which was originally introduced in substantially its present form by Senator Taft on May 4, 1943. It provided for enforcement of the Board's orders in suits brought by the Attorney General in any one of the circuit courts of appeal. Senator Taft's proposal with this provision for court enforcement was rejected by the Senate on May 5, 1943. On the same day, however, a portion of Senator Taft's proposal was offered as an amendment to the pending substitute. It contained a provision that the decisions of the Board should be final "except as they may be subject to review by the court on questions of law." This amendment was agreed to, and as the bill was finally adopted by the Senate on May 5, this was the only provision for court enforcement or court review of War Labor Board decisions.

As adopted by the House, the Senate's version of the bill had been substantially changed and the clause providing that the Board's orders were to be final, except as they might be subject to review on questions of law, had been deleted. The House version of the bill consequently contained no provision either for court enforcement or court review of the Board's action.

The bill was then referred, as you will recall, to a joint conference committee. On June 9, 1943, pursuant to a unanimous resolution of the War Labor Board, I addressed a letter to Senator Van Nuys, a member of the conference committee, suggesting that whatever bill was to be proposed by the conference committee should contain no

provision for judicial enforcement or for review of the Board's decisions. In that letter, after referring to the record of voluntary acceptance of the Board's orders, we stated:

This record of compliance indicates that no legal change in the status of the Board's orders is necessary. These orders are in reality mere declarations of the equities of each industrial dispute, as determined by a tripartite body in which industry, labor, and the public share equal responsibility; and the appeal of the Board is to the moral obligation of employers and workers to abide by the no-strike, no lock-out agreement and in conformance therewith to carry out the directives of the tribunal created under that agreement by the Commander in Chief * * * Finally, it must be remembered that the Board is entrusted by Executive orders and regulations, issued under the act of October 2, 1942, with the entire execution of the national wage stabilization policy. The vast majority of the Board's dispute cases involved wage issues, in addition to which the Board is receiving over 2,500 cases per week of voluntary applications for approval of proposed wage adjustments. In all of these cases, the decisions of the Board on wage issues, if disappointing to one party or another, could be taken into the court on the ground that the decisions were in conflict with some provision of the act of October 2, 1942, or of the Executive orders and regulations thereunder. This danger would be particularly acute in the dispute cases in which feeling runs high and in which the delays resulting from court review would do severe harm to the cause of industrial peace.

For all of these reasons, we respectfully submit that for the duration of the war, it would be in the best interests of the country to permit the War Labor Board to function as it has in the past 16 months, without the right to apply to the courts for legal sanction and without being subject to court review of its decisions.

May I interject there again? That means exactly what it says, no provision for judicial enforcement or for judicial review of the Board's decisions. That does not mean if a man comes into court and says his constitutional right has been invaded that the court would have no jurisdiction in that case. Of course, they have come into court and said that and the courts can review that. We were taking the position, and have taken it, and Congress agreed, that in this war period our judgment should be relied upon as to the proper way to settle these controversies, that the way of settlement should not be reviewed in the courts, but there isn't time. The war is going to be over before you can review it. That does not mean if a man thinks his constitutional rights have been taken away from him that he cannot get a judicial review on that question. That is an entirely different matter.

Now, I have put into this document a substantial quotation from our letter to the conference committee, or to Senator Van Nuys, which I would like to put into the record but will not stop to read it. What weight the conference committee gave it, I do not know, but the bill, as pointed out by the conference committee, contained no provision for court review of the enforcement of the Board's decisions.

Then, I have put into this document, gentlemen, and would like to put into the record, a series of abstracts from the Congressional Record, of the statements made during the Senate debate on the conference report.

The CHAIRMAN. That may be inserted in the record.
(The text of the statement referred to is as follows:)

Mr. DAVIS. What weight the conference committee gave to these views, I do not know. However, the bill as reported out by the conference committee contained no provision for court review or court enforcement of the Board's decisions. I think that the following statements made during the Senate debate on the conference report clearly reveal the congressional intention in this regard: After stating that the conference committee would not accept a provision for review of the Board's order, Senator Austin stated:

"But another reason was that the proposed legislation had to do merely with the prosecution of the war and the attempt to assure continuous maximum produc-

tion of the things necessary to be sent overseas to our armed forces. Therefore, the idea of intruding into the war effort delays which might arise from appeals induced me to change my mind, and I withdrew the amendment which I had proposed." (89 Cong. Rec. p. 5724.)

"Mr. THOMAS of Utah. Mr. President, I ask the Senator from New Mexico [Mr. Hatch], the Senator from Connecticut [Mr. Danaher], and the Senator from Texas [Mr. Connally], the sponsor of the bill, whether there is a unanimous opinion on the part of those three great lawyers that there will not be a reopening of the district courts to industry-labor disputes? If I can make that point, Mr. President, I shall be happy that I made the mistake in my judgment about the bill. I should like that point to be made so firmly and so strongly that no lawyer in the land who would like to take advantage of the situation created by the mere mention of the words 'district court' will resort to the court in order to confuse our industry-labor relations.

"Mr. CONNALLY. Mr. President, the Senator from Utah said he would like to have the unanimous opinion of the Senator from New Mexico and the Senator from Connecticut and the Senator from Texas, and I think the Senator from Vermont may be included, if I may have the attention of the Senator from Vermont. I think I speak for the Senator from Vermont and the Senator from New Mexico and the Senator from Connecticut and also the Senator from Indiana [Mr. Van Nuys], although he is not present—all of whom were on the conference committee, Senator Connally being in charge of the bill on the floor—when I say that there is no jurisdiction whatever conferred by this bill providing for resort to the United States district court, except the one mentioned by the Senator from Connecticut, which is merely the right to go there for a civil action for damages, and no jurisdiction whatever is given over labor disputes. Does that answer the Senator?

"Mr. THOMAS of Utah. I thank the Senator for making that statement and I hope it will satisfy the lawyers of the country.

"Mr. CONNALLY. I am sure it will" (pp. 5754-5755). By way of summation, Senator Connally concluded:

"It is true that the Senate bill did contain that clause, which was really a limitation to questions of law. The conference struck out that provision on the ground that this was a summary measure, it was a wartime measure, it was an emergency measure. They did not care to invite appeals to the courts, and delays, which in the case of the National Labor Relations Act have averaged 232 days from the time the Board took jurisdiction with respect to cases until they were finally decided in the courts" (p. 5791).

Mr. DAVIS. They left no doubt as to what the Senate intended on the subject and that the Senate intended to reject the court review of court enforcement of our orders. This is unequivocal from the discussion. From this the Attorney General has concluded that Congress intended to make no change in the status of the Board's orders as they were prior to the passage of the War Labor Disputes Act, and that those orders are to remain free from the delays inherent in judicial proceedings.

But I venture to say that Congress was moved, not only by its knowledge that speed is of the essence in disposing of wartime labor disputes, but also by its awareness of the kind of issues which the Board is called upon to determine.

There is in the minds of many, I think, much confusion regarding the type of issues that come to the Board for disposition. They are not issues as to the legal rights and obligations of the parties. They are issues which in peacetime are resolved by collective bargaining or by strikes and lock-outs. Many of the situations that confront us daily are charged with emotional conflict calling for the exercise of balanced judgment and discretion. Many involve practical problems of operating techniques. Others are made more complex because of deep-rooted prejudice and conviction. No convenient rules are at hand to determine right and wrong. The problems call not for the expert techniques of the lawyer but for understanding and experience in the field of human industrial relations. In fact, most of

the cases before us are not presented by lawyers but by businessmen and union leaders. And the issues are not what under the law one or the other party is bound to do, but what in a particular situation it is fair and equitable that one or the other party ought to do. This is made clear by the language of the War Labor Disputes Act which, after reference to four enumerated statutes, provides that the orders of the Board shall provide terms and conditions of employment "fair and equitable to employer and employee under all circumstances of the case."

And because we are concerned with fairness and practicality rather than with technical legal right and obligation, the tripartite character of our Board has peculiar value. I venture to say that when labor, industry, and the public are asked to make a joint recommendation as to what the equities and fairness of the situation require, their combined judgement will seldom be very wide of the mark.

I have gone rather fully into this question of court review and court enforcement because I want to emphasize that the question is for Congress to determine. In adopting the War Labor Disputes Act on June 25, 1943, Congress concluded that there is no time during this war emergency for court enforcement or review of the fairness and equity of the Board's decisions. We believe the reasons for that conclusion are as compelling today as they were last June. Had the effectiveness of the Board's decisions been held up by giving to dissatisfied parties, employers, or unions the right to delay the settlement of disputes by resort to the courts, the men and women in our armed forces would lack much of the equipment they now have. Delay is no more tolerable today than it was then. But if any change is to be made in the present procedures only Congress can make it, alert, however, I hope, to the risks that are entailed in prolonging the peaceful settlement of these disputes.

In summary, the National War Labor Board assumed jurisdiction over this dispute involving Montgomery Ward & Co. and the employees of its Chicago establishment and, if you please, over 22 other labor disputes involving the employees of the Montgomery Ward Co. at its other establishments throughout the country.

The Board took this action because it is the unanimous opinion of our labor, industry, and public members that this company employing some 78,000 people, operating more than 600 establishments in 47 States of the Union, having annual gross sales in excess of \$600,000,000, supplying farm families with some 20 percent of all their living and working requirements is engaged in activities directly related to the successful prosecution of the war.

It is our opinion that failure or refusal of the Government in time of war to furnish a means of peacefully resolving disputes directly involving the employees of this company and threatening to involve thousands of employees of other companies would, without the slightest doubt, lead to substantial interference with the war effort.

We believe, moreover, that inability to act in this case would mean that we were unable to act in other cases involving employees in such fields as the distribution, transportation, service trades, wholesale and retail services because like Montgomery Ward their employees do not manufacture war materials. Approximately 15,500,000 people would thus be free to strike, for the no-strike pledge was based on the authority of a tripartite Board to settle labor disputes for which other

peaceful means of settlement are not available. And it would lead finally to a complete disintegration of the existing machinery set up by Congress to preserve industrial peace.

I submit in conclusion that the only way to have an effective no-strike policy is to ban all strikes, and the only way to ban all strikes is to have a forum where all disputes can be peacefully resolved, a forum whose statutory authority is incontestable and whose decisions must be accepted. In this connection I respectfully call your attention once again to the three points of the basic wartime labor policy established by the Labor-Industry Conference of December 1941.

(a) That there should be no strikes or lock-outs for the duration of the war.

(b) That all labor disputes should be settled by peaceful means.

(c) That a tripartite War Labor Board should be set up to handle these disputes.

I might add just this, Mr. Chairman, that since that happened the Congress has afforded a statutory basis for our operations. We are now a creature of Congress, and you can believe me when I say that what we want to know and all we want to know is what Congress intends that we should do. We are prepared at any time to bring before the Congress our problems, and we always will act within the authority given to us by the Congress, whatever it is, and for that reason, and because I must sincerely believe that this job can be handled, the problem can be solved under this act of Congress; if we have the consistent support of Congress, within the limits set down by Congress, I think we can do the job, and if we do and as we do there is no possibility of encroachment upon our civil liberties as defined by the Constitution and the Bill of Rights, and I can say to you that the only possible threat to our civil liberties, to our constitutional guaranties that could arise out of the strike situation would be if the provision of Congress and the powers of the War Labor Board were so inadequate as not to be able to handle the thing by good, constitutional, congressional law. If we are handicapped so we cannot handle the problem, it would only be under those circumstances that there could be any possibility of encroachment upon our constitutional liberties.

I say to you in conclusion that we can handle the problem. We can handle with the law we have. I am not boasting about it, but I say to you gentlemen that our control of the strike situation in this country is the most effective control that has ever existed anywhere in the world under a free people, and I know what I am talking about. I think it was Mr. Burke who said—and I am not quoting him exactly, but the substance of it was: "Observe us as we run, aid us if we fall, but let us pass on." For God's sake, let us pass on. We are quite capable, with the backing of Congress, of handling this labor situation during the war period in an effective manner. If the Congress feels what we have now been told is not correct, we think it is sufficient as we have understood and interpreted it; if the Congress feels that is not sufficient, let Congress say what else it wants us to do and we will do it, and if it is done, gentlemen, there is no danger of encroaching upon our constitutional liberties. I must say this, as far as I am concerned, I would not risk my constitutional right for Montgomery Ward & Co., not one iota. I think it is a different order of magnitude.

The CHAIRMAN. Will you be back at 2 o'clock, Mr. Davis?

Mr. DAVIS. Yes.

The CHAIRMAN. The committee will take a recess until 2 o'clock. (Whereupon, at 12:10 p. m., a recess was taken until 2 p. m., of the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order, please.

STATEMENT OF WILLIAM H. DAVIS—Resumed

The CHAIRMAN. At the morning session Mr. Dewey raised a question about whether or not certain parts of a statement made by Mr. Davis should remain in the record—quotations from Mr. Harry L. Derby and a letter written by Mr. Roger D. Lapham, which appear on pages 9, 10, 11, and 12 of the prepared statement.

The committee has decided to pass on that question at an executive session to be held later. The question of whether or not those quotations will remain in the record will be decided later by the committee.

Mr. Davis, I would like also to have you furnish the committee, so we may consider whether or not they should become a part of the record, a copy of the Board's decision in *Case No. 160*, which is the *S. A. Woods case* and a copy of the article written by Mr. Roger D. Lapham called, *Thinking Aloud*. (See appendix.)

Mr. DAVIS. Yes, sir.

Mr. DEWEY. May I ask, Mr. Chairman, if Mr. Lapham's audible thoughts are similar to the quotations?

The CHAIRMAN. I can't answer that question because I haven't seen them.

Mr. DAVIS. I can answer that, Mr. Chairman, by saying that I should say that that is a mild representation of Mr. Lapham's audible remarks.

Mr. DEWEY. You mean his audible remarks in *Thinking Aloud* are more strenuous than his statement in the quoted part of your statement?

Mr. DAVIS. Very much more pungent than anything he put into considered writing, I am sure.

The CHAIRMAN. I am not asking that they be made a part of the record, but that they be furnished the committee so that they may be passed upon.

I also request that a copy of the Executive order of January 12, 1942, which I understand established the first War Labor Board, be furnished. (See appendix.)

Mr. DAVIS. January 12, 1941, it must have been.

The CHAIRMAN. I think there was a supplemental order dealing with the jurisdiction of the War Labor Board prior to the time the Congress set it up by statute. (See appendix.)

Mr. DAVIS. Yes, sir.

The CHAIRMAN. We would like to have that and we would also like to have a copy of the agreement entered into by industry and labor shortly after Pearl Harbor, in which they pledged no strikes and no lock-outs, and the names of the representatives of management and labor who participated in that conference. (See appendix.)

Mr. DAVIS. Yes, sir. The agreement really took the form of a letter from the President addressed to the conference, in which he

set forth his understanding of what had been agreed to, and what further should be agreed to, and then the industry members of the conference expressed their acquiescence in that.

The CHAIRMAN. Do you know whether the labor members acknowledged it also?

Mr. DAVIS. Well, there was no written communication. What happened was that Senator Thomas and I, who were moderators of the conference, reported to the President a certain amount of agreement and a statement on a certain amount of disagreement.

The President then wrote a letter to the conference in which he suggested a solution of the disagreement which had to do with whether union security matters would be within the jurisdiction of the proposed board, and that letter from the President was submitted to a meeting of the whole group. Industry expressed its adherence.

As they put it, they said, "In times of war this is an order. We salute and obey."

That is the way Roger Lapham expressed it, as a spokesman.

The CHAIRMAN. Were there any minutes of that meeting kept?

Mr. DAVIS. They were not running minutes, Mr. Chairman, but there was a reporter there and he made a report, a running report, which is in the records and I can get a copy of it for you if you like.

The CHAIRMAN. I think the committee would like to have access to it, anyway. I don't know if we would want to have it put in our record. (See appendix.)

Mr. DAVIS. It was not a stenographic report. Mr. Pritchard was secretary of the conference and he kept notes, which were reduced in the form of a report to the President.

The CHAIRMAN. Mr. Davis, you have had a lot of experience with labor relations, have you not?

Mr. DAVIS. Yes, I suppose so. Sometimes, I think, I wish I had less.

The CHAIRMAN. How many years have you been dealing with labor relations?

Mr. DAVIS. It is really not my vocation, Mr. Chairman. It is an avocation with me.

I got into it during the N. R. A. days when I was Deputy Administrator under Johnson and we all had to deal with labor matters, and then I was made National Compliance Director. I said to Mr. Johnson that was something like being made curator of the snakes in Ireland. In that position I had a great deal of labor matters, and later some work for the Twentieth Century Fund, and in 1937 when Governor Lehman set up a State labor board in New York he asked me to take the chairmanship.

That is the first time I had done any work on labor relations. It was a part-time job and didn't interfere with my law practice too much, and I kept at that until the fall of 1940, when I got notice from my wife that I would have to quit. So I did.

And shortly after that I was drafted into the first Mediation Board that was set up by President Roosevelt in the spring of 1941.

The CHAIRMAN. Mr. Davis, will you tell us what a closed shop is? Will you define what constitutes a closed-shop agreement?

Mr. DAVIS. A closed-shop agreement is one in which all members of the shop that are embraced within the group that is covered in the closed-shop agreement, must be members of a union and, usually in a

closed-shop agreement the new employees are supplied by or through the union.

The CHAIRMAN. And how does that differ from a union shop?

Mr. DAVIS. Well, in a union shop the new employees may be taken in by management from any place management chooses.

During the trial period through which an employee usually goes, they do not have to be union members, but if they are permanently employed, they have to become members of the union.

The CHAIRMAN. Now, Mr. Davis, will you point out to the committee the difference between the closed shop and the maintenance-of-membership plan which, as I understand it, was evolved by the War Labor Board?

Mr. DAVIS. Well, it was not exactly that, Mr. Chairman. It was an old idea, but we made use of it, and the difference is this:

On the maintenance-of-membership plan you do not have to be a member of the union to work in a plant, to be employed in the plant, and you don't have to become a member of the union to remain an employee of the plant.

We added to the old maintenance-of-membership plan which, as I say, was a known arrangement, a 15-day escape clause, as it was called, in order that free citizens might, if they worked in the plant where there had been no such provision and then it was decided that the provision was going into effect, have a 15-day period in which to decide each for himself whether he would comply with the plan or not.

The plan is that a man who at the end of those 15 days has remained a member of the union of his own choice, that is, has not withdrawn during this period, is obligated to remain a member of the union until the end of the contract, whatever the contract term is.

You will understand that in such a shop there are nonunion members and union men working side by side. Some of the nonunion men may be former members of the union who have withdrawn from the union in this 15-day period because they did not want to be bound to remain members under the union until the end of the contract year, or whatever the contract term is.

Does that answer your question?

The CHAIRMAN. That answers my question. Just one other question.

Whenever the Labor Board has established maintenance of membership, it is my understanding that they have also provided the 15-day escape period in which any member of the union was free to withdraw from it.

Mr. DAVIS. That is a correct statement of our present policy, and I think in one or two cases when the policy was developed we applied the maintenance of membership in the old-fashioned way, that is, without the 15-day escape period, but after the pressure of very energetic industry members on the Board led by Roger Lapham, now mayor of San Francisco, they persuaded us to insert the 15-day escape clause, as they call it, in all such contracts, and that is now our custom.

The CHAIRMAN. What was the purpose of the Board in establishing the policy of providing maintenance of membership?

Mr. DAVIS. When the Board was set up, Mr. Chairman, this country was wracked with controversies about union shops and nonunion shops. That had been the thing which the conference appointed by

the President had not been able to agree upon, and it had been the President's decision that all matters in dispute should be referred to this Board.

The industry side agreed to that. They said, "All right; we will get our orders and we salute; we will go along."

But then they wanted the Board to agree not to make any orders about union security of any kind. The union people wanted, of course, the Board to order closed shops or union shops, and the industry side didn't want any orders at all about the union status.

I can hardly convey to you today—our memories are so short—the intensity of the feeling at that time on the subject and the enormity of the problem that lay ahead of us.

I can say for the four original members of our Board that they regarded that as the great problem ahead of us. And we succeeded by tripartite ideas and by the working out of this maintenance of membership, which is characterized by the fact that a man does not have to join the union if he does not want to. He has absolute freedom of choice and even if the shop is going to be put on that basis, he is notified beforehand and told, "If you don't want to remain a member of the union up to the end of the contract period, you can say so and get out."

It certainly was a piece of real statesmanship, and I can say that without my face turning red because I didn't develop it. It was the outgrowth of a very real contest of two conflicting groups with an umpire, and it resulted in putting on the shelf for the duration of the war the hottest potato that anybody dealing with labor relations in this or any other country ever had to handle. That is what it did.

The provision itself is of little significance as you can see. I mean, it is applied only to men who have already joined the union, and even with those men, we go to them and say, "Did you make a mistake when you joined the union? You have 15 days to change your mind and if you want to change it, change it."

Certainly that preserves the individual liberties of our citizens and nevertheless, and for reasons which it would take me a long time to explain, it solved the problem. It put this great problem, the greatest we had, away for the duration of the war; and, in that sense was, I think we would all agree, the greatest act of tripartite statesmanship that has been pulled off in our time.

The CHAIRMAN. If you had not devised that, in a great many cases coming before the Board you would have been faced with a demand for the closed shop or the union shop by the unions, and a demand by the employer for no closed shop and no union shop?

Mr. DAVIS. That is right, sir, in almost every case. And there would be no solution—and I say this thoughtfully—to that problem case by case.

You couldn't say in this case, "We are giving you a closed shop," and in that case, "We won't give you a closed shop."

The only possible solution was something that would put it to sleep and put it on the shelf. We chloroformed it for the duration. That is what it amounted to.

The CHAIRMAN. This Montgomery Ward agreement has a check-off system in it. It is my understanding that is purely voluntary. Is that correct?

Mr. DAVIS. Purely voluntary on cards signed by the individual and revokable at will.

The CHAIRMAN. Do all of the maintenance-of-membership contracts contain that same type of check-off?

Mr. DAVIS. No, sir. Some do and some do not, in different cases.

The CHAIRMAN. Whenever you impose a check-off, do you make it voluntary?

Mr. DAVIS. Well, in substance; yes. It is a different kind of check-off where you tie the check-off to the original, so to speak. You say to the man when he makes this choice, "If you choose to remain a member of the union you have got to remain for the duration of the contract, and during that time your dues will be checked off." So he has his choice at that time.

The CHAIRMAN. And in some cases it is revokable and in some cases it is not?

Mr. DAVIS. That is right.

The CHAIRMAN. The maintenance-of-membership plan, as I understand it, does permit the employer to select new employees who do not have to join the union. Is that correct?

Mr. DAVIS. Yes, sir, that is correct.

The CHAIRMAN. You have already stated, Mr. Davis, that the Board has no authority in law to go into court and enforce its orders. That being true, is there any way that the court can secure jurisdiction of the question of enforcement of the Board's orders except by the Government taking possession?

Mr. DAVIS. No, I don't see how there is, if I follow you, Mr. Chairman. That is, the orders themselves are not orders which a court could be required to enforce on the parties to whom they apply. There is no provision for that.

They are like a decision, for instance, of the National Labor Relations Board as to a bargaining unit. What is a bargaining unit? There is no appeal from that and there is no method of enforcement of it in the courts.

And that, I think, was the deliberate choice that the Congress made, that they would not be enforceable in court or reviewable.

As I said this morning, that is quite a different question, of course, from someone who comes in and says that his constitutional liberties have been infringed and proceeds in court against a Government officer who is acting under an order of the Board.

The CHAIRMAN. Well, the reason I asked that question is that I have seen in some letters and in some newspaper articles, the question asked why the Government did not go into court to get possession of the Montgomery Ward plant.

As I understand the War Labor Disputes Act, the Board not having any authority to enforce its orders in court, the Government could not go into court and enforce those orders and, therefore, the only way the case could get into court was to take possession of the property.

Mr. DAVIS. That is absolutely correct.

The CHAIRMAN. There have been some other cases against the Montgomery Ward Co. Will you tell us why the Chicago case was sent to the President and why the other cases have not been, except the Hummer case which happened afterward?

Mr. DAVIS. I can tell you that, Mr. Chairman. My face is a little red in doing so.

The fact of the matter is, as I intimated this morning, that we and our predecessor, the National Defense Mediation Board, have been fussing with the Montgomery Ward people ever since the defense program started. We have issued orders and they have never been complied with.

Frankly, we are patient people, I think, and we put first things first, and we have had plenty to do so that for months these orders of our Board have been ignored by Montgomery Ward.

They went into court; they are in court now, as I pointed out. The thing never really became critical. We are not like a court into which suits are brought which we have to take up in order.

We are doing a job in human relationships in a war, and we have to put the more important things first.

The situation in the Chicago plant of Montgomery Ward become so important and the contract with the maintenance of membership clause in it, which, mind you, had been accepted by the company and had been in force for a year, terminated, and when the contract terminated they decided they did not want to go on with it and that is what gave rise to this row and brought the thing to a head, and finally, when the company defied our orders the men went out and shut the plant down.

Now, we have without a single exception, from the beginning of this program, said to the workers of America, "You must not strike. You must stay at your benches."

As I brought out this morning, we have made no exceptions no matter what the provocation.

And when these fellows walked out in Chicago against a plant which had defied the Board and the President, we could not say to them, "You must go back to work."

And it is the one case since the Board was set up in which the Board, acting for the Government, has not said to the workers, "You must stay at work," or "You must go back to work no matter what the provocation."

We just could not say to these fellows, "You must go back to work for an employer who has defied the Board and, as a result, defied the law."

The result was we had a strike that we could not break. And I know people will think it is an exaggeration when I say it, but they wouldn't think so if they sat where I sit. But I know that affair in Montgomery Ward's plant in Chicago attained possibilities of tremendously dynamic evil to the War Production Board in Chicago, and I can prove it to anyone who will go over my records with me.

We couldn't make the men go back to work under those circumstances. We couldn't ask them to.

So we told the President about the situation and he took over the plant.

The CHAIRMAN. Now, Mr. Davis, if the President had not backed up the War Labor Board under all those circumstances what, in your opinion, would have been the effect of his failure to back the Board on the future of the Board and its ability to settle labor disputes during this war?

Mr. DAVIS. Well, it is hard to be a prophet, Mr. Chairman, but I have no reason to believe that our strike-settling policy could survive that blow, because it just cannot work the policy unless it applies

equally to everybody, and if one person can defy the War Labor Board, so can another.

And believe me, we are not dealing with litigants in a law court. We are dealing with hundreds of thousands of men, millions of men, and many thousands of employers in a dynamic work, and I say that if our decisions are ignored by Montgomery Ward, if they cannot be enforced against Montgomery Ward, they cannot be enforced at all.

The CHAIRMAN. Mr. Davis, would you like to explain to this committee the difference between seizure of Montgomery Ward's plant and the failure to seize John L. Lewis' office during the coal strike? A lot of people want to know about that.

Mr. DAVIS. I think that is a very interesting and natural question. Of course, you say right off the bat that we wanted to use Montgomery Ward for the good of the country, and we didn't want to use Mr. Lewis' office. But that is only a partial answer.

The inside truth of the matter is this. Everybody understands that when you seize a plant of a manufacturer who has refused to go along with this war-time program, nobody has any difficulty with that—but they say, "Why seize his plant when it is the workers that won't go along?"

The answer to that is a very profound constitutional answer which this Congress understood but which is not so easy to explain.

When the War Labor Disputes Act was in Congress it was proposed to make it a crime by concerted action to oppose or interfere with the orders of the Board. And, if I remember correctly, it was Congressman Jerry Voorhis who pointed out that you could not do that in this country—or perhaps he said that you shouldn't do it—because to make it a crime for a private citizen to interfere, without violence, with the business of a private employer, is just not good Americanism and Mr. Voorhis said, "You must make this plant a Government plant before you make it a crime to interfere with its operations. It must be a crime against the Government, not against the private employer. We don't order out the United States Army to protect the rights of a private employer."

And that suggestion of Mr. Voorhis immediately was accepted, as I remember, unanimously by the House, and the House put into the bill that the criminal penalties apply only after seizure.

In other words, where the union or the workers are at fault, the seizure is made in order to make what they are doing a punishable crime. It is the first step to putting them in jail, so to speak, if they keep on with it.

I think that is good Americanism, good constitutionalism, but it is not so easy to understand.

The people say, "Why seize the employer's plant when the men are at fault," and the answer is that you seize it because you want all the power of the United States Government to be available against these men who are defying that Government—and you can only do that by seizing the plant.

And, as a matter of fact, as you know, the seizures that have occurred of plants where the union or the workers are at fault have been without harm to the employer. The employer's rights are fully protected and, as a matter of fact, it is always with benefit to the employer because he gets his plant back at work and gets to make money out of it.

Look at the coal mines, Mr. Chairman. Suppose the Government had not taken over the coal mines. What would be the economic status of the operators of the coal mines today? They would all be broke.

I have talked too much on that, maybe.

The CHAIRMAN. One or two other questions, Mr. Davis.

Do you construe section 7 of the War Labor Disputes Act to require the War Labor Board to take jurisdiction over cases certified to it by the United States Conciliation Service?

Mr. DAVIS. Yes.

The CHAIRMAN. Has the Board ever failed to take jurisdiction in any case certified to it by the Conciliation Service?

Mr. DAVIS. No, sir. We have a liaison with the Conciliation Service. We have a two-man committee, one from them and one from us, and they keep in very close contact.

We sometimes persuade the Conciliation Service to take the case back when we think, for one reason or other, that conciliation has not been exhausted. If they say, "No, we are going to certify this thing," we have to take it, of course.

The CHAIRMAN. One other question and I will be through. There is some doubt in my mind whether the power of the War Labor Board rests exclusively under the War Labor Disputes Act of whether you still operate to some extent under the power given by Executive order. Will you tell us about that?

Mr. DAVIS. I think the answer to that would be that certainly the existence of Executive Order 9017 was recognized in the act of Congress which says:

National War Labor Board established by Executive Order No. 9017, dated January 12, 1942, in addition to all powers conveyed on it by certain statutes and any Executive order or regulation issued under the provisions of the act of October 2, 1942, shall have the following powers and duties,"

which I think is language appropriately interpreted as preserving the old powers under the Executive order, and adding to them.

I don't recall, however, Mr. Chairman, that that question has ever been significant in our discussion of any case.

I would say with a great deal of confidence that every case we have handled since the act of Congress has been amply supported by the authority given in the act without recourse to 9017.

The CHAIRMAN. But you are positive, then, as I understand your testimony, that the jurisdiction of the War Labor Board is not limited to plants engaged directly in the manufacture of munitions and war supplies.

Mr. DAVIS. Oh, yes, sir; I think there is no doubt about that.

The CHAIRMAN. Regardless of what may be the people's opinion as to the President's powers, the Board has jurisdiction over any labor dispute which they think may interfere with the war effort; is that correct?

Mr. DAVIS. That is right, sir. That was brought out very clearly in the discussion in the Congress, in the Senate.

Senator Taft made a remark that I have somewhere in my papers here, directly in point there. The question was raised, in effect, "Oh, no, the powers of this Board are not intended to be limited in that way."

The CHAIRMAN. The Board also has the power and authority to pass on applications for wage increases, both in war industries and outside of war industries, has it not?

Mr. DAVIS. Yes, sir; all wage increases.

The CHAIRMAN. All right.

Mr. DEWEY?

Mr. DEWEY. I will reserve my time.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Mr. Davis, this morning you commented somewhat at length about the old National Mediation Board, and mentioned that it was succeeded by the National War Labor Board. As a matter of fact, when that transition took place, the new Board retained the same personnel, practically, didn't it?

Mr. DAVIS. No. What happened there was this: It was a 50-50 matter, Mr. Elston. What we tried to do, or what was attempted to be done by the President and those who were advising him, was to take half of the members of the new Board from the old Board, and the other half were to be taken from the outside.

That was substantially done. For instance, Dr. Graham and I had been on the old Board and we were put on the new Board. Dr. Taylor and Wayne Morse were brought in as new public members and that went on down the line.

Mr. ELSTON. You retained the same employees, did you not?

Mr. DAVIS. Yes; but the organization was smaller than we have now.

Mr. ELSTON. The Executive order provided for that, didn't it?

Mr. DAVIS. I think so.

Mr. ELSTON. Now, Mr. Davis, the reason for the dissolution of the old Mediation Board was that some of the members walked out?

Mr. DAVIS. That is right.

Mr. ELSTON. And the War Labor Board was then set up by Executive order because there wasn't any board to handle labor disputes?

Mr. DAVIS. Well, Pearl Harbor came in in the interval, Mr. Elston, and made a great difference.

Mr. ELSTON. So the new Board was set up not solely because of the so-called agreement between industry and labor, but because the old Mediation Board had passed out of existence?

Mr. DAVIS. Let me give you the exact picture on that, because I recall it very well.

I was Chairman of the old Mediation Board and was hobbling along on crutches, so to speak.

The C. I. O. people had withdrawn from the Board—not the A. F. of L., but the C. I. O. people. And we were handling cases, but not all cases, and we were trying to work out some scheme to get back our broken leg, and I think we would have worked out some scheme. We had done a lot of thinking about it.

I don't know, but I had made some suggestions and they had advanced to some extent.

I will never forget on the morning of Pearl Harbor, or, when I found out about it, which was not until late in the day, the very next morning I got on the phone and got in touch with the Secretary of Labor and others with whom we had been conferring on this, and I said right away, "Our problem is settled. We won't have any trouble now getting a new board," and sure enough we didn't.

Mr. ELSTON. The power given to the old Board was practically the same as the power later given to the War Labor Board?

Mr. DAVIS. I wouldn't regard that as an accurate statement, Mr. Elston. The fact of the matter is that the power given to the Mediation Board in its original Executive order, if you read it today, sounds like a gentle wind in the springtime compared to the language of the Executive order setting up the War Labor Board after Pearl Harbor.

The original Executive order is tentative. We were to take the case, we were to study it, we were to make recommendations, and, if we thought it would do any good, we were authorized to make them public. There was not a word of compulsion in it.

The tone changed, and Executive Order 9017, authorized the Board to make orders determining the dispute.

Mr. ELSTON. Did it give any authority to enforce the orders?

Mr. DAVIS. No.

Mr. ELSTON. Did the War Labor Disputes Act give you any authority to enforce the orders?

Mr. DAVIS. No.

Mr. ELSTON. Now, there is a vast difference, isn't there, between section 7, which is the general section that simply gave the War Labor Board some statutory authority, and section 3, which gives the President the right to seize a plant, a mine, or other facility?

Mr. DAVIS. That is the very question I was raising with the committee, Mr. Elston.

What I say is: We have assumed that the power to seize which does not rest in us but in the President, the statutory power to seize was intended to be as broad as our duty to order. Otherwise, you are going to have orders which is our duty to make, and no power to enforce them, and I say to this committee and to anyone else who is interested, that if you want to threaten the safety of the constitutional guaranties, there is no better way in the world to do it than for the Congress to give a body like ours the right to make an order and leave no provision for having those orders carried out in a certain class of cases, because it seems to me—or rather I will put it this way—that is what I mean when I say you cannot threaten our fundamental liberty by foreseeable emergencies unless someone neglects his duty because we can point out the emergencies to the Congress and if the Congress does not provide for them, as I believe they have done, then there is where the danger begins.

Mr. ELSTON. Do you think that section 3, which specifically refers to a plant, a mine, or a facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort, includes a retail store?

Mr. DAVIS. I don't know that that question can be answered in that form. I have already expressed myself.

I think under the act of Congress the President's power to seize is as broad as the Board's power to order. I say to the Congress that if I am mistaken about that, then there is left unprovided for orders of the Board, with no congressional authority given for their enforcement, and the act ought to be amended.

Mr. ELSTON. Mr. Davis, can you give any reason at all why Congress should single out just three specific types of business, namely, a plant, a mine, or a facility, all of which must be equipped for the

manufacture, production, or mining of any articles which may be required within the war effort—why Congress in section 3 would limit it to those three things and not include everything, or not use the all-exclusive term such as is embodied in section 7?

Mr. DAVIS. Well, section 3 was dealing with quite a different thing from section 7. Section 7 was dealing with the kind of disputes that were to be certified to us by the Conciliation Service, very broadly.

Now, section 3 was an amendment to the old law, section 9, wasn't it? As to what remedy would be applied?

Now, they have a very different origin, as you probably know. One came from Senator McCarran's bill, and the other came from an entirely different direction, and they had certainly a very different wording. But, as I say, we have and do—perhaps I ought not to say "we" because we don't do the interpreting of section 3. It is the President and his advisers who do that.

We operate under section 7. We issue our orders under section 7.

Now, whether we recommend to the President—we report to the President, and recommend appropriate action. He knows what we mean, but the seizure is, as you suggest, under section 3.

And, what I say to you is this: That we have interpreted section 3 to be broad enough to cover every order that we are directed by the act to make which is not complied with, and I say to the House of Congress that if the method of securing compliance is less broad than the power to order, then you are going to leave orders of the War Labor Board without any statutory means of enforcement, and you are going to put, I think, the Administration in a position where it will have to exercise this extraordinary constitutional power, whatever it may be, and which I don't care to define.

Mr. ELSTON. Now, Mr. Davis, you testified before the Military Affairs Committee when it had this bill under consideration, didn't you?

Mr. DAVIS. Yes, sir; I think so.

Mr. ELSTON. You didn't ask for any authority under section 7. did you?

Mr. DAVIS. I don't know what you mean by that.

Mr. ELSTON. Did you ask Congress to impose any penalty for failure to obey any order you might make under section 7?

Mr. DAVIS. No. We were not asking Congress for anything.

When I appeared before the Military Affairs Committee, it was at the request of the committee, and I can't remember whether the subject of enforcement came up at my appearance there. But we had advised the Senate and the House too—yes, I remember now—a similar letter had been written to the Military Affairs Committee, written to Senator Van Nuys, in which we had said that we thought the orders of the Board should not be reviewable on their merits or enforceable by court action.

Is that what you mean?

Mr. ELSTON. As a matter of fact, you opposed at least a part of the War Disputes Act when you wrote a letter to Speaker Rayburn against the bill, didn't you?

Mr. DAVIS. I can't remember that view. Can you refresh my recollection about that—about what part of it—

Mr. ELSTON. Don't you remember that your Board and Secretary Patterson and representatives of the Navy Department and several

others, including the National Labor Relations Board, wrote a letter to the Speaker, opposing certain parts of the War Labor Disputes Act?

Mr. DAVIS. I can remember that we did write such a letter, but I don't remember at the moment, without refreshing my recollection, what part it was.

Mr. ELSTON. You opposed the 30-day cooling off period in that particular, didn't you?

Mr. DAVIS. I think so; yes.

Mr. ELSTON. So that you never did ask Congress at any time to enforce any order of the War Labor Board?

Mr. DAVIS. No; quite the contrary.

I have said, Mr. Elston, that nothing could so cripple the work of this agency—and it is none too easy—as to give it the power of enforcement, making policemen out of it.

The War Labor Board is the place where the three sides get together and try to come to a rational conclusion. You wouldn't think so sometimes if you could see us at it, but that is what we are really doing, and I think the thing we must not be supplied with is our own power of enforcement. Somebody else has got to do that.

Mr. ELSTON. You are contending now, aren't you, that the War Disputes Act provides the most drastic kind of remedy, namely, it allows the President of the United States to seize any kind of private industry in the United States?

Mr. DAVIS. We have always understood that the seizure provision under the act was as broad as the provision authorizing us to make orders.

And I repeat that if it does not, then Congress is leaving us with the power to make orders affecting the war, and nobody has the power to enforce them by congressional provision. If you do that, Mr. Elston, it seems to me nothing but disaster could come from it.

Mr. ELSTON. Isn't this the situation, Mr. Davis: You didn't want any power of enforcement; you have indicated that here today.

Mr. DAVIS. That is right. We didn't want to be policemen.

Mr. ELSTON. So that when Congress wrote the War Disputes Act, in section 7, they gave you practically the same authority and power you had before, except that they gave you the power of subpoena and the reason they did that was that you were maintaining, or somebody was maintaining that you couldn't bring John L. Lewis before the War Labor Board and enforce his appearance before the Board. Is that correct?

Mr. DAVIS. I don't remember the John L. Lewis incident, but it is certainly correct that in the act, section 7 gave us no power that we did not have before, except the power of subpoena, and the difference was that the power we had before had been derived from Executive order and is now derived from a congressional act.

Mr. ELSTON. And aside from the subpoena power you didn't get much more additional authority did you?

Mr. DAVIS. I don't think so, no.

Mr. ELSTON. And you don't contend now that you had any more power than you had before except to say that if you certify any business to the President, no matter what business it is, has failed to comply with your order, the President may seize that business.

Now, as a matter of fact, section 3 was the outgrowth of a separate and distinct piece of legislation that came to the House from the Senate in what is known as the Connally bill, and Congress confined seizures to plants, mines, or other facilities engaged in the manufacture, production, or mining of articles required in the war. That is correct, isn't it?

Mr. DAVIS. Yes.

Mr. ELSTON. And that is the way you understand the act, isn't it?

Mr. DAVIS. The way I understand the act is that that power to seize, is as broad as our power to order. What I am saying to the committee here, and to the Congress, is that it is a very dangerous thing, dangerous to our fundamental institutions, to leave the War Labor Board with the power to order in one case and no power to enforce that order. There is nothing more dangerous than that in a democracy.

Mr. ELSTON. How do you get out of the words, plant, mine or facility, equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort—how do you get out of that narrow definition an enterprise like Montgomery Ward?

Mr. DAVIS. Mr. Elston, I am not here to argue with you about it. What I say to you is that it is up to Congress.

In our interpretation of the act of Congress, the only thing we have to interpret really is the part that tells us what to do, and we interpreted that and we make orders in any cases that we think will substantially affect the war effort, and that is very broad.

Now, we pass it on to the President. It is not for me to say what the President's powers are under section 3.

But, what I say to this committee is that if the President's power to seize is less broad than our power to order under the statute, then you are leaving a situation where we have to issue orders and there is no way to enforce them, and in wartime it is a dangerous thing to do.

If there is any threat to our fundamental liberty it will come out of leaving an order of a statutory body in a hot situation without power of enforcement. If you want to destroy our fundamental liberties, that is the way to do it, because the President would have to act.

Mr. ELSTON. Isn't that what you asked for?

Mr. DAVIS. No.

Mr. ELSTON. Didn't you say to Congress that you didn't want any authority to enforce the powers you already had?

Mr. DAVIS. I don't know, Mr. Elston, whether you understand your own question or not, frankly. What I am saying to you is: We don't want any duty or power to enforce our own orders at all. We want to hand that over to the cop. We cannot be a successful tripartite agency if we are our own policemen. That doesn't mean that I don't think our orders should be enforced by anyone.

Mr. ELSTON. You feel, don't you, that your orders, unless they pertain to a plant, a mine, or other facility engaged in manufacturing materials or mining materials for the war effort, are purely directive?

Mr. DAVIS. I think we can get this straight if you follow me. I think that our orders must be made in the very widest fields in any dispute which may affect the war effort.

When our orders are made, we do not have their enforcement. I say to you they should all be made enforceable. We have assumed that

they were all enforceable. If it was the intention of Congress to make only half of them enforceable, I say that gives rise to a very dangerous constitutional situation which is bound to lead not only to strikes, but to constitutional trouble.

Mr. ELSTON. You contended rather recently in a case in the District of Columbia, the case of Montgomery Ward & Co. versus your own board, Case No. 21483, that there is no constraint upon the parties affected by your order to do what the Board may decide they should do, except moral constraint. Did you make that contention in that case?

Mr. DAVIS. I don't remember. I assume so.

Mr. Garrison is here if you want to ask him about that.

I know what the situation is. We have no power to enforce our orders. We don't want to be our own policemen. Somebody else has has got to do that. A policeman can't settle family quarrels.

Mr. ELSTON. Didn't you say in that case that Section 7 of the War Disputes Act ratified and confirmed Executive Order 9017 without changing the nature of the Board's functions or the effect of its orders?

Mr. DAVIS. Yes, that is certainly true and I assume it was said then.

Mr. ELSTON. Executive Order 9017 didn't give you power to refer cases to the President for seizure, did it?

Mr. DAVIS. We don't need any power to refer a case to the President. Neither Executive Order 9017 or the statute gives us power to refer cases to the President. We report to the President of the United States, the Commander in Chief in time of war, that we are in trouble, and when we do it, we salute.

Mr. ELSTON. You said in answer to a question by Mr. Ramspeck that seizure was your only way of enforcing your order.

Mr. DAVIS. Against a union.

Mr. ELSTON. Yes.

Mr. DAVIS. Yes; that is what I meant. We have to seize in order to make the acts of the union in defiance of the order criminal.

Mr. ELSTON. Now, Mr. Davis, you said that the situation in Chicago had created a great problem, it was very serious, and therefore you had to refer the matter to the President. Do you feel that way about it?

Mr. DAVIS. Yes.

Mr. ELSTON. What was the sole issue there?

Mr. DAVIS. The issue there was this: There had been a contract in existence for years. The contract came to an end. The union tried to negotiate a renewal of the contract and the company said, "You no longer represent a majority," and refused to bargain with them. That was the issue. It was certified then to us. And look! We did this violent, arbitrary thing. We said "Won't you fellows please sit still; stay as you are until this question of representation can be determined by the duly constituted methods provided by law?" And we were so arbitrary about it that we said to Montgomery Ward, for the first and only time, we said, "Since you raised the question, and it has some show of verity about it, we will order this union to have an election," something that they were not required to do by law.

And we said to those people, "We will provide for an election for you that the law does not provide for, so as to find out whether or not

you are right in saying this union does not represent your employees. All we ask you to do is to maintain the present status until the election is held."

And what we got from Montgomery Ward, was the most thorough-going and deliberate tearing down of the relationship. Every effort was made that they could make to destroy the status that existed at that time.

Mr. ELSTON. Weren't they at all times asking for an election?

Mr. DAVIS. Yes, they were.

Mr. ELSTON. And if the election had been held that would have terminated the whole thing, wouldn't it?

Mr. DAVIS. I would have thought so until when the election was held, much to my surprise, Mr. Avery came out in the newspapers and said he would not agree to the proposal anyway, even after the election.

Mr. ELSTON. When the election was held the soldiers were withdrawn and the plant was turned back to its former owners, wasn't it?

Mr. DAVIS. Yes.

Mr. ELSTON. So the election was the only thing that Montgomery Ward & Co. was asking for and when the election was held the property was turned back?

Mr. DAVIS. Yes. But the union was asking for something. Montgomery Ward got all they asked for from the Government, but then the question was Were their employees to get what they asked for, and as I read the papers, Mr. Avery came out and said that in spite of the fact that these men had been demonstrated by the lawful process to represent the majority of his employees, that he was not going along anyway.

Mr. ELSTON. Do you know why the property was turned back before even the results of the election were known?

Mr. DAVIS. No, sir, I don't. Do you?

Mr. ELSTON. No. I would like to know.

Mr. DAVIS. I don't know.

Mr. ELSTON. Don't you think that that determined the only thing at issue—the election?

Mr. DAVIS. That is what I thought until the next day when the President, as I recall it, made a remark to the press conference indicating that he thought that had solved the difficulties between them, and the next day Montgomery Ward came out and said, "Not at all," that there was still differences between them.

Mr. ELSTON. There is no strike.

Mr. DAVIS. No.

Mr. ELSTON. They are at work?

Mr. DAVIS. The men are working because they are loyal citizens of the United States who went back to work when the Government told them to, and they are working without a contract, although under an election they have been found to be representative of the majority of the workers and are entitled to speak for them all.

Mr. ELSTON. They are bargaining now?

Mr. DAVIS. I don't know. I believe they are. They have no contract.

Mr. ELSTON. Now, Mr. Davis, in your affidavit which was filed in the Chicago case, you contended, did you not, that if the matter was not settled, the strike would spread?

Mr. DAVIS. Yes, sir, I expressed that opinion.

Mr. ELSTON. Now, before a strike could spread, there would have to be a vote of the employees under the War Disputes Act and a 30-day cooling off period, wouldn't there?

Mr. DAVIS. No, sir. That reminds me, Mr. Elston, of the resolution passed by our common council in New York, and the resolution was that the picture of our beloved mayor be and hereby is hung upon the wall of the council room, but that didn't hang the picture. And the law requiring that men should vote before they strike does not keep them at work.

Mr. ELSTON. Were you assuming that there would be strikes and that they would ignore the provisions of the War Disputes Act?

Mr. DAVIS. Certainly.

Mr. ELSTON. And were you also assuming that they would ignore their no-strike pledge?

Mr. DAVIS. Yes.

Mr. ELSTON. You had to assume that in order to make the statement—

Mr. DAVIS. Certainly I had to assume it, Mr. Elston, and if I had not assumed it I would have been hiding my head like an ostrich in the sand.

What's the use of making words about it. We know very well that in spite of the no-strike pledge and in spite of this well-intentioned law, men quit work.

Mr. ELSTON. Did you have any evidence that anybody was going out on strike because of the Montgomery Ward controversy?

Mr. DAVIS. Yes, I had a great deal of evidence. As a matter of fact, Mr. Elston, we had a strike at the Pullman plant where Mr. Avery is interested. They took the position up there, "Oh, these fellows at Montgomery Ward have struck because Montgomery Ward doesn't obey the War Labor Board's order, and the War Labor Board is not doing anything about it." So they said, "Well, our employer, the Pullman Co., has not complied with the order of the Board so we are going to strike. We have as much right to strike as Montgomery Ward." The difference was that the Pullman employees were deciding for themselves whether or not the company was complying with our order. That's only one.

Listen, Mr. Elston; this matter of keeping men at work in this country for the war effort—and I say this to you who should know—but I can say statistically, that it has been the best job that ever has been done in any country in the world for which there is any record.

I don't attribute that to the War Labor Board at all. I attribute it to the country as a whole. But it is a job that takes doing 24 hours a day. There is not a day in the week that we don't have to take action to keep men at work or get them back to work. And if anybody thinks they can pass an act of Congress and keep them at work, they are mistaken.

I think the basic idea about a strike vote in the act was a good one. They said, "The majority of American citizens are patriots. No patriot will strike in a war plant. Therefore all we have to do is to give these patriots an opportunity to vote and the majority of them will always vote against a strike."

The reasoning did credit to Congress, but it didn't work out. And the reason is that the men think the other fellow is the unpatriotic one.

That is the way human beings are. The test is in the votes taken under the act. The tremendous majority of them have voted for a strike.

Mr. ELSTON. You didn't cite the *Pullman case* in your affidavit. You mentioned just the Pacific coast maritime and general strike, and the recent Nation-wide strike in the steel industry centering in Pittsburgh. The Pacific coast maritime and general strike was in 1934, wasn't it?

Mr. DAVIS. I don't know what you are talking about.

Mr. ELSTON. Your affidavit filed in Chicago.

Mr. DAVIS. I haven't the affidavit here. But I either have failed to make myself understood or something is wrong.

What I was trying to point out about the Pullman strike was that as a result of the row at Ward's, the Pullman fellows started to pull a strike. That is the point I was talking about here. You asked if I had reason to believe that the strike would spread without waiting to take a vote under the statute, and I say yes, I knew it would spread. It is all right to say that they are supposed to take a vote under the statute. But what are you going to do about it?

Mr. ELSTON. Do you know any cases where strikes have spread simply because of the action of one local?

Mr. DAVIS. Oh, yes; I have a case I mentioned this morning where one local started a picket line in Michigan in food stores and they had the whole town, fifteen or twenty thousand men.

Mr. ELSTON. Do you know of any others?

Mr. DAVIS. I think I could furnish them to you—and I mean what I say—at the rate of one a day. There is a terrific one out in Detroit that I heard about this morning. I have not been able to get back to my office and don't know how it stands, but a very difficult situation has come up arising out of some minor affair.

Mr. ELSTON. Well, now, the steel strike that you referred to in your affidavit in Chicago was on a Nation-wide basis, wasn't it, by virtue of some negotiations with the international union as distinguished from a mere local union?

Mr. DAVIS. Will you tell me what steel strike it was?

Mr. ELSTON. The one you referred to in your affidavit.

Mr. DAVIS. I haven't the affidavit before me.

Mr. ELSTON. I will read it to you:

Examples of such spreading are the 1943 strikes in Akron centering in the rubber industry, the Pacific coast maritime and general strikes in 1934, and the recent Nation-wide strikes in the steel industry centering in Pittsburgh, Pa.

You mentioned only those three examples.

Mr. DAVIS. And you asked about the third one, which was the steel strike, all through the industry, about Christmas time.

Mr. ELSTON. The steel and rubber strikes were, of course, where an international union was making certain demands. That is true, isn't it?

Mr. DAVIS. Not exactly. They were strikes which spread because the members of the international union were all interested in the same thing. But that is equally true of Montgomery Ward, of course.

Mr. ELSTON. Now, you answered a question this morning to the effect that you didn't think that courts had any jurisdiction at all over any order of the War Labor Board.

Mr. DAVIS. I didn't say that.

Mr. ELSTON. Perhaps I didn't state it exactly the way you said it. What did you say?

Mr. DAVIS. If you want my views about it, Mr. Elston, they are this: What we suggested to the Congress, and the Congress adopted our suggestion, was that these orders of ours should not be reviewable on their merits in court. That is like a decision of the N. L. R. B. as to a bargaining unit. That was a decision of Congress.

Now, that does not mean that an act of our board, or an act of the President to carry out an order of our board is not reviewable in court. I suspect you are a better constitutional lawyer than I am, but certainly a citizen of the United States who believes that he has been deprived of his constitutional rights by an act of Government, has access to the courts to put it up to them.

Mr. ELSTON. That is what Montgomery Ward & Co. did when they filed suit in the District of Columbia.

Mr. DAVIS. No, sir.

Mr. ELSTON. Didn't they contend your order was a violation of the fourth and fifth amendments of the Constitution?

Mr. DAVIS. Yes; but our minds don't seem to run along very well together.

What I was just saying to you was that the orders of our Board were by the deliberate act of Congress, after full discussion, left without enforceability in the courts.

But what I say is, that an act of the Government to carry out an order of the Board which is charged to be in violation of the constitutional rights of anybody, can be reviewed in court. Not the merits of our decision, but the act of seizure.

Mr. ELSTON. That is what Montgomery Ward were asking in the suit of the District of Columbia.

Mr. DAVIS. Not exactly. They sort of hollered before they were hurt. They brought a suit to enjoin us from acting, but also to enjoin us from ordering.

Mr. ELSTON. Don't you always bring an injunction suit before the damage is done?

Mr. DAVIS. No, you don't. And you don't bring an injunction suit against the pavement in the road because a fire engine skids and runs into your house.

Mr. ELSTON. No, you sue for damages.

Mr. DAVIS. But you don't sue the road. You sue the fire engine or whoever is responsible for the fire engine.

I say, under an act of Congress most deliberately passed, the correctness of the orders of the War Labor Board—that is the judgment or lack of judgment displayed—is not enforceable in court. Why? Because it takes a year and a half or two years to get a case reviewed in the Supreme Court, and the war will be over, we hope, before then. But that doesn't mean that if a person against whom an act of the President enforcing an order of the Board is applied, says, "You have taken my property without due process of law," he can't go into court with that.

What Montgomery Ward did was to try to kill two birds with one stone. They tried to get the court to say that our order was unlawful, and it has been up to two or three courts who have said the contrary. But if I make the distinction plain—

Mr. ELSTON. I think you do, but you have not answered the question.

Mr. DAVIS. Excuse me.

Mr. ELSTON. Montgomery Ward were insisting in the District of Columbia case that the order violated the Constitution.

Mr. DAVIS. Yes, sir.

Mr. ELSTON. Specifically, the fourth and fifth amendments.

Mr. DAVIS. Yes, sir.

Mr. ELSTON. And you went into court and asked for the dismissal of the case.

Mr. DAVIS. The Attorney General did for us; yes, sir.

Mr. ELSTON. He represented you, didn't he?

Mr. DAVIS. I don't know. I think literally and constitutionally he did not.

Mr. ELSTON. Who did represent you in court?

Mr. DAVIS. Nobody represented us. The Attorney General represents the President and took the case over.

Mr. ELSTON. This is the case before the seizure where Montgomery Ward & Co. went into the Federal court in the District of Columbia and raised the question of the validity of your order and claimed it violated the Constitution. You went into court and asked to have it dismissed and attempted to preclude them from getting these constitutional questions determined. Isn't that true?

Mr. DAVIS. I think so; yes.

Mr. ELSTON. And you just said a moment ago that you thought anybody who claimed they were losing constitutional rights had a right to go into court and have these questions determined.

Mr. DAVIS. Yes. I say this with some hesitation, but all I say is there is no court remedy addressed, as I understand this *Montgomery Ward case* was, to our orders. But if, in backing up our orders and acting under this act of Congress or by the so-called reserve powers, the plant is seized, then as I understand the law, there is a suit against the person who seizes the plant and, in that suit the constitutional liberties of the citizen can be preserved. That is the way I understand it.

Mr. ELSTON. You said a while ago, didn't you, that there was no authority in the courts at all to enforce any order you might make except seizure of the plant by the President? That is correct, isn't it?

Mr. DAVIS. I think so.

Mr. ELSTON. Now, as a matter of fact, in a case that was recently in the District of Columbia, filed by Montgomery Ward & Co., Judge Goldsborough held there was another remedy, namely, mandatory injunction. Do you disagree with the court's opinion in that case?

Mr. DAVIS. Well, frankly, Mr. Elston, I never read the opinion. The way you state it, it seems very doubtful to me. But let's pass that. That decision of Judge Goldsborough's was, as I understand it, appealed to the court of appeals by the Attorney General and is now pending there, and I certainly don't want to discuss it.

Mr. ELSTON. As a lawyer you know it is the law until it is reversed?

Mr. DAVIS. Yes.

Mr. ELSTON. If your Board is set up by statute, and it has legal authority to make an order, why wouldn't mandatory injunction lie to enforce the order?

Mr. DAVIS. Mr. Elston, you probably know the answer to that better than I do. If you take my advice, you won't seek legal learning from me in this particular field.

Mr. ELSTON. I thought since you went through this case, and that was one of the issues, and an exhaustive file was filed, that you would know more about it than I do.

Mr. DAVIS. I don't know, Mr. Elston, if you think I wrote the brief. If you do, you are mistaken. I have other things to do.

Mr. ELSTON. Do you disagree with that principle of law? You are a lawyer.

Mr. DAVIS. I have forgotten how you stated it, so I would rather not agree or disagree.

Mr. ELSTON. Let me ask you again. I think it is important. If the War Labor Board is set up by law as it is, and it has a right to make an order under the statute, don't you think you can go into court and ask for a mandatory injunction against anybody who refuses to comply with the order?

Mr. DAVIS. I really don't know. Of course, you can go into court and ask for it, but your question is, Do you think you would get it, and I really don't know.

Mr. ELSTON. Did it get it in this case? At least the court held it was a remedy.

Mr. DAVIS. You really don't mean that, do you?

Mr. ELSTON. It was Judge Goldsborough's opinion.

Mr. DAVIS. There was no application there for a mandatory injunction.

Mr. ELSTON. That is right.

Mr. DAVIS. As I understand, he expressed some arbitrium about it. What he would have said if the shoe had been on the other foot—

Mr. ELSTON. I will read it to you:

The court is of the opinion, construing the language and other language of section 7, that the order which the Board can pass is a justifiable one. In other words, the court is of the opinion that if the Board's proper order was not obeyed, it would have the right to go into the district court and ask for a mandatory injunction to compel compliance with its order.

That's pretty plain, isn't it?

Mr. DAVIS. Yes; I understand that.

Mr. ELSTON. Now, the court having so decided why didn't you go into court when Montgomery Ward refused to obey your order, and ask for a mandatory injunction, instead of referring the matter to the President so he could seize the plant?

Mr. DAVIS. In the first place, I had never read Judge Goldsborough's opinion and, in the second place, I would not have had enough confidence in it to follow his orders. In the third place, in these cases you just can't wait for court action and that is the reason that the Congress, as I understand it, decided that our orders would not be subject to court review.

It is all right to say, "You go into court and get a mandatory injunction," and then the other side comes in and stays the mandatory injunction until the merits are decided. and I hope to the Lord that this war is going to be over within the time that it takes to test a question like that before the Supreme Court of the United States.

Mr. ELSTON. Do you contend that if you went into court and asked for a mandatory injunction that you could not get a hearing on a matter of that kind immediately?

Mr. DAVIS. Of course I could get a hearing. Why are we fencing words, Mr. Elston? You know as well as I do the delays in court actions, and if your suggestion is that these cases in which the plants are not directly engaged in the manufacture of munitions, that the orders of the War Labor Board should be enforced by mandatory injunction, I can only say to you, and I say it with the greatest of sincerity and the best of feeling, that that is a subject to which I have never given any thought. Whether that would be an effective means of winning the war, I don't know.

Mr. ELSTON. If it served the purpose, if the court ordered the company to comply with the order, what more could you ask for?

Mr. DAVIS. Nobody who wins a lawsuit, Mr. Elston, ever asks for anything more than that. It is the fellow who loses the action who asks for more.

I have said all I want to say about it.

Mr. CURTIS. Mr. Davis, what was the date of the Executive Order No. 9017 which created the National War Labor Board?

Mr. DAVIS. January 12, 1942.

Mr. CURTIS. Now, Mr. Davis, I believe in the last sentence of section 3 of that Executive order you find this language:

After it takes jurisdiction the Board shall finally undertake the settlement of that dispute and for that purpose use mediation and voluntary arbitration and arbitration under rules established by the Board.

Is that not correct?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. Now, when was the National Labor Relations Board recognized by statute? What was the date of that?

Mr. DAVIS. You mean the War Labor Board. That was in June of 1943.

Mr. CURTIS. Now, referring to section 7, the War Labor Disputes Act that has been mentioned here, the act of June 25, 1943, section 7 refers to the functions and duties of the Board.

Were any powers conferred upon your Board to compel compliance with your orders and decisions which you did not have under Executive Order No. 9017?

Mr. DAVIS. No.

Mr. CURTIS. Are you familiar with Executive Order No. 9370 issued August 16, 1943?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. Briefly, state what that provides.

Mr. DAVIS. That is the order, isn't it, addressed to Mr. Vinson, and it provides that Mr. Vinson may apply certain, what we call minor sanctions. I say Mr. Vinson. I mean the Economic Stabilization Director, whoever he may be.

And he may apply certain sanctions for enforcement of the directives of the National War Labor Board.

Mr. CURTIS. Sanctions, such as denying priorities?

Mr. DAVIS. Denying priorities, yes; or if it is the employer who refused to comply, they can deny priorities and other benefits under the war legislation.

If it is the union he can apply certain remedies there, like withdrawing draft exemptions or employment privileges of the individual, or withdrawing the exclusive right, so to speak, of a union.

Mr. CURTIS. Was this Executive order used in the *Ward case* in Chicago before they marched the troops in and took possession of this store?

Mr. DAVIS. It was not used in the *Montgomery Ward case*.

Mr. CURTIS. Now, at the time of the Board's order of January 15, 1944, in reference to Wards of Chicago, was there a public hearing for labor and management as provided under section 7 of the War Disputes Act?

Mr. DAVIS. There had been; yes.

Mr. CURTIS. Where was that held?

Mr. DAVIS. Several were held, but most were here in Washington.

Mr. CURTIS. Was there any specific hearing that grew out of that order?

Mr. DAVIS. We have the history of the whole proceeding here. We had a public hearing here in Washington on December 16. The dispute was certified to us on December 6. We ordered a public hearing in Washington on December 16.

Mr. CURTIS. Was that the last public hearing you held before the issuing of the order in January 1944?

Mr. DAVIS. I think so, yes.

Mr. CURTIS. That hearing was held here in the city of Washington?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. How long did it last?

Mr. DAVIS. I don't remember.

Mr. CURTIS. Do you know who testified then?

Mr. DAVIS. No. Mr. Barr was here, the attorney for the company, as I recall it, and Mr. Wolchok, who is president of the union. That is all I remember, but I can furnish the records if you want me to.

Mr. CURTIS. You don't know what witnesses were called?

Mr. DAVIS. We never call witnesses in that sense—or practically never—and certainly there were none in this case. In our hearings we don't call and swear witnesses.

Mr. CURTIS. No witnesses were sworn?

Mr. DAVIS. No, we don't swear witnesses.

Mr. CURTIS. Was there cross-examination of anyone who testified permitted?

Mr. DAVIS. Well, there would have been, yes. There were two sides arguing the case and our procedure is to allow each side a certain time to make its statement, usually 45 minutes, and we ask that there be no interruption of that 45 minutes by either a Board member or the other side.

Then, at the end of that period the speaker is questioned in time that is not charged against him, either by the Board members or the other side, through the chairman.

Mr. CURTIS. But it is a fact that you don't permit either side to cross-examine the other side under oath?

Mr. DAVIS. We do not administer oaths, do not permit that kind of cross-examination. Every question has to go through the Chair. At least, that is the theory. They sometimes get away from the chairman.

Mr. CURTIS. Have you already submitted an order that you issued at that time—is that the order of January 15?

The CHAIRMAN. I think it is referred to in his testimony.

Mr. CURTIS. Will you produce a copy of that order for the committee?

Mr. DAVIS. What order is it?

Mr. CURTIS. The order of January 15, 1944.

Mr. DAVIS. Yes, sir. May I call your attention to this provision as to the participation of the parties in a hearing before the Board? Section 802.19 of the rules of organization:

(a) The interested parties or their representatives shall be given reasonable opportunity—

(1) to be present in person at every stage of the hearing;

(2) to be represented adequately;

(3) to present orally or otherwise any material evidence relevant to the issue;

(4) to ask question of the opposing party or a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that such questions have no material bearing on the credibility of that party or witness or on the issues in the case;

(5) to know and rebut any evidence, oral, documentary, or otherwise;

(6) to present to the panel oral or written argument on the issues.

(b) The witnesses at a hearing need not be sworn, but any person who at such hearing knowingly and willfully makes any false statement, sworn or unsworn, is subject to the penalties provided by law (18 U. S. C. A., section 80).

Mr. CURTIS. Now, I want to ask you something about this question of representation. Was it the contention of the Board in the order of January 15, 1944, that if the matter of representation was not agreed upon within 30 days, that the union should seek an election to determine the question of representation?

Mr. DAVIS. Yes, I think it was.

Mr. CURTIS. They did not seek an election, did they?

Mr. DAVIS. Yes, they did. They went in to the National Labor Relations Board with a request—I think I am stating it correctly—that the Board certify that they were the bargaining agent on the basis of the old certification.

The Board regarded that as a request for a redetermination and proceeded to arrange for an election.

Mr. CURTIS. But they did not ask for an election? They asked for recertification?

Mr. DAVIS. Yes. That is what you ask for, why you ask for an election. I don't know what you are driving at exactly. The purpose of an election is to get from the Board a recertification or a certification.

Mr. CURTIS. But they could have asked outright for an election?

Mr. DAVIS. Yes.

Mr. CURTIS. And they didn't do that?

Mr. DAVIS. No.

Mr. CURTIS. There is no provision of the law whereby an employer can ask for an election, is there?

Mr. DAVIS. An employer?

Mr. CURTIS. Yes.

Mr. DAVIS. Not in that situation. That is, a situation in which there is only one union. When two unions are involved he can.

And that was the reason, Mr. Curtis, that our Board in this particular case, went beyond anything it has ever done in any other case, and took action which enabled Montgomery Ward to test the question by an election.

Mr. CURTIS. But the matter of a request for an election was before the National Labor Relations Board, was it not?

Mr. DAVIS. No. You see, Montgomery Ward having no rival union, could not, as I understand the procedure of the N. L. R. B.,

could not have gotten an election from them. All they could do was to refuse to bargain and have the Board proceed against them for a refusal to bargain.

So what we did was to afford to Montgomery Ward an opportunity to test the question by an election, which they could not have gotten from the National Relations Board without our action. That is what they wanted, and we gave it to them.

Mr. CURTIS. How many bargaining units are there at Ward's in Chicago?

Mr. DAVIS. I think there were seven at that time, but there are now two.

Mr. CURTIS. They have been combined?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. What were the seven?

Mr. DAVIS. Well, I don't know. I can give a guess at it. There was the mail order house and the retail store, and there was some sort of a paint shop or warehouse.

Mr. CURTIS. Swing warehouse?

Mr. DAVIS. Swing warehouse; and then sportographic, and two or three other little places.

Mr. CURTIS. Had your Board consistently held those as separate units or had they grouped them?

Mr. DAVIS. We had nothing to do with these separations or groupings of the bargaining units.

Mr. CURTIS. That is a matter for the National Labor Relations Board?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. Did Ward's ever refuse to obey an order increasing wages made by your Board?

Mr. DAVIS. I don't think so. Not at Chicago, but at Portland.

Mr. CURTIS. I mean in Chicago, the subject of this inquiry.

Mr. DAVIS. Not at Chicago.

Mr. CLARK. I think you said this morning that your Board handled some 6,700 cases.

Mr. DAVIS. Yes, sir.

Mr. CLARK. Could you give any idea as to how many of those, what portion of them, were war industries striking and how many were outside of war industry?

Mr. DAVIS. No, I can't make that division, Mr. Clark. As a matter of fact, if you put the cards on the table, today in America almost any industry is a war industry—it affects the war effort. But we have made no separations statistically on that basis.

Mr. CLARK. Of course, you were asked about this mandatory injunction. Of course, if a party had a right to apply for a mandatory injunction for the enforcement of an order, any party could, by the same token, apply for an injunction against the injunction.

Mr. DAVIS. Yes, of course. Being a lawyer, I hate to see the legal processes of that kind reduced in this country, but the determination that was made by the Congress, as I understand it, was that the War Labor Board could not do its job if its orders were to be reviewed in court.

Mr. CLARK. In a telegram or reply of some kind, or a letter from the head of Montgomery Ward to the President, setting forth their reasons for declining to comply with his request, something was said to the effect that to do so would interfere with the freedom of the

employees in the election. Would you mind enlightening me a little on that point? I believe it said that the union would have a right to ask Ward to discharge and would therefore have a coercive effect.

Mr. DAVIS. I know what you mean. I am trying to find it. Frankly, it was a little too subtle for me.

The fact of the matter was, or the substance of what they said was, if this order of the War Labor Board is put into effect in this interim period, then the union should call upon the company to discharge anyone who had withdrawn from the union. And that there were a great many who might have been discharged that way.

There was nothing in that. In the first place, during the entire year of the contract in which the maintenance of membership clause had been in effect, the union had not asked the company to discharge a single man. There is no ground for supposing that any request for discharge would be made during this interim period, and even if they had been made they could not under the Board's rules of procedure lead to discharges prior to the 30-day period within which the National Labor Relations Board was to conduct the election, because under our rules it takes more than 30 days of examination and preliminary steps after the union asks for a discharge before a company has to make it.

And the alarm that Mr. Avery expressed that he might have to discharge a lot of people in the interim period was a false alarm.

Mr. CLARK. Now, I think he also maintained that to comply with your Board's order would require him to violate the National Labor Relations Act.

Mr. DAVIS. Yes, he did take that position. We didn't think so.

Perhaps I am prejudiced about it, but it is very difficult for me to believe that anybody thought so.

All our order did was to say, "Stand still now. Don't do anything, any overt act, until this election can be held. You asked for the election, and just stand still until the election is held."

Mr. CLARK. I will ask just one more question, please, sir. There has been a lot said in the press and in Congress and on the radio about the President, probably with the connivance of your Board, going out and seizing small business and farms and hen roosts, peanut stands, as my colleague suggests. Is there anything in the Executive order or in this War Labor Disputes Act that would authorize you to make any order except under circumstances that materially affect the war effort?

Mr. DAVIS. No; certainly not. It is a matter, of course, of judgment.

Mr. CLARK. The act refers to a labor dispute which may lead to a substantial interference with the war effort. Now, could there be any order by your Board or any seizure except in compliance with that principle in the Executive order and the act?

Mr. DAVIS. Well, of course, there could not be any lawful order except in compliance with that, substantial interference with the war effort. That is what we try to guide ourselves by.

Mr. CLARK. Now, would a businessman or home owner or anybody else have any reason to fear seizure under that unless his operation and circumstances were such as to substantially interfere with the war effort?

Mr. DAVIS. No, sir; certainly not.

Mr. CLARK. That is all.

Mr. BYRNE. I am content, Mr. Chairman.

Mr. DEWEY. Mr. Davis, following a little bit the line of my colleague from North Carolina on this matter of substantial interference with the war effort, I thought you said this morning that the efforts of the War Labor Board were to cover all strikes, no matter where they might be, and I think, if I understood you correctly, that would not have anything to do with substantial interference with the war effort, because you said "all strikes."

Mr. DAVIS. I think I can make myself plain about that, Mr. Dewey. What I was saying, as I recall it, was that the original no-strike agreement which was reached after Pearl Harbor, was an agreement that there would be no strikes and that all disputes would be referred to this Board that was to be created.

In the Executive order, No. 9017, we put in those words of some limitation—that is, that the dispute must relate to work the interruption of which would affect the conduct of the war—and what we have always regarded as substantially equivalent language was put into the statute, "substantially affect the war effort."

That, as I say, is a matter of judgment with the Board. We have had cases which evidently did not affect the war effort. But, let me call your attention to this: That Congress in passing the act left the decision in that matter not to us but to the Conciliation Service.

I want you to get that point because in the act of Congress it was provided that when the Conciliation Service certified to us that a dispute was one substantially affecting the war effort, then we took jurisdiction; and it is true that we have worked with them in trying to come to some mutual understanding about it.

My attention has been called to a resolution of our Board on the subject on March 26, 1944, which is as follows:

When the United States Conciliation Service has certified that a dispute exists which may lead to substantial interference with the war effort within the meaning of section 7 (a) 1 of the War Labor Disputes Act, the Board will act upon the findings so made.

Apparently under the statute we have no choice.

But, as I say, we have the closest relations with the Conciliation Service. Mr. Steelman and I are old friends and have worked together for years, and we have two men, responsible men, one in each organization, who constitute a little committee and try to keep things on the track and keep from us anything that does not substantially affect the war effort.

Mr. DEWEY. Now, it was very definitely, I think, developed during the course of your statement and the questions that have been asked, that you have no authority to issue orders that have the effect of law. That, I think, is admitted. Therefore, decisions of the War Labor Board should naturally be fair and equitable.

Mr. DAVIS. That is what the statute requires of us, Mr. Dewey.

Mr. DEWEY. And they should be consistent.

Mr. DAVIS. Isn't that too much to ask?

Mr. DEWEY. I don't know.

Mr. DAVIS. I am an Emersonian, Mr. Dewey, and I regard consistency as the least of virtues.

Mr. DEWEY. I don't know. I think consistency in a case like this has certain advantages that we have to turn back to if we do not have an opportunity to go before a court of justice.

Now, on January 13, 1944, the War Labor Board took over the jurisdiction of the Ward case. You did that, did you not?

Mr. DAVIS. It was certified to us.

Mr. DEWEY. Certified to you?

Mr. DAVIS. Yes, sir.

Mr. DEWEY. And on April 15 the sixth district of the War Labor Board refused jurisdiction of the Sears, Roebuck matter?

Mr. DAVIS. Yes, sir.

Mr. DEWEY. And I have read the directive order in which:

The Regional War Labor Board for the sixth region, acting as the duly authorized agent of the National War Labor Board in the exercise of the powers vested in it by Executive Order No. 9017 of January 12, 1942, the Executive orders, directives, and regulations issued under the act of Congress of October 3, 1942, and by the War Labor Disputes Act of June 25, 1943, hereby declines to exercise jurisdiction in this case.

And in reading the majority opinion, the paragraph that is pertinent to the thought that I am trying to put over, or the subject I am trying to develop is:

It will only do so if that course appears necessary in order to prevent a serious interference with the effective prosecution of the war. Similarly, the Board's majority concluded that this Board should only elect to exercise its authority in an area already covered by that of the National Labor Relations Board and specifically to force an employer to bargain with a certified union when and if such action is justified by the urgency of the situation in the effective prosecution of the war.

Now, the question in my mind is, Why would Sears, Roebuck in Minneapolis, that was preparing to go on strike, not substantially interfering with the war effort, and yet Montgomery Ward, exactly the same type of company, that was going to go on strike, why was it substantially interfering with the war effort?

Now, I am going to ask the chairman if I might turn over to the clerk the two catalogs, one of Sears, Roebuck and one of Montgomery Ward, for such purposes as the committee may need or care to have them, and we are going to find in looking over the index exactly the same things for sale. Even the pictures are almost identical.

And those two companies, as we all know, have been in competition for a great many years, and yet a strike in one substantially interferes with the war effort and a strike in the other does not.

That is why I ask the question and think that there should be consistency in the policies of the Board.

Mr. DAVIS. Mr. Dewey, the catalogs may be useful for many purposes, but they throw no light on this question.

Mr. DEWEY. Mr. Davis, you have constantly brought out that Montgomery Ward sells agricultural machinery.

Mr. DAVIS. If you will let me finish maybe I can make it clear to you.

The question of jurisdiction here does not depend upon the person but upon the subject matter. The difference is that the particular dispute in the *Sears, Roebuck case*, and it is under review by the Board—but on the face of the documents submitted in the majority opinion, the subject matter in dispute was not within the jurisdiction of the Board, the majority thought, because it was something over which the Labor Relations Board had exclusive jurisdiction. It had nothing to do with the persons. It is the subject matter.

That is why I think the catalogs won't help us any.

Mr. DEWEY. I only brought them in for the benefit of the committee, not to enter them into the records of these hearings. I so assure the taxpayers.

But I just wanted to have evidence here that both companies are selling exactly the same things, which can be proven by the indexes and the photographs and pictures.

You did take jurisdiction of one company and you just stated that you did not follow the law that was set down in section 8 (2) that requires a cooling-off period of 30 days after notice.

It seems to me that there are some points there that have great similarity as to cases, and yet a different kind of treatment was accorded to both companies.

Mr. DAVIS. I think I can see your difficulty, and I would like to try to relieve you of it.

Mr. DEWEY. I would like to have you do so.

Mr. DAVIS. The situation was that the question of jurisdiction in the two cases did not depend at all upon the person involved but the subject matter. The subject matter, according to these opinions, majority and minority opinions, in the *Sears, Roebuck case*, was a question of which the majority thought the National Labor Relations Board had exclusive jurisdiction, no matter who brought it up.

So the majority out there in Chicago said, "We have no jurisdiction of that subject matter."

As you know, the statute provides that the War Labor Board will have no jurisdiction over anything within the jurisdiction of the National Labor Relations Board. That decision should be the same whether it was John Jones or Bill Smith or United States Steel Corporation, or whoever it was. It was the subject matter, not the person, that was involved.

Now, the subject matter involved in the *Montgomery Ward case* was the sole subject matter of negotiating a contract and disputes about the contract or the collective bargaining agreement.

Do I make myself plain about that, Mr. Dewey?

Mr. DEWEY. I think you do, but it is not really answering the question that I am trying to bring out.

The case in both was the same or should have been the same because they are similar companies. A strike in either one would have been a substantial interference with the war effort. You found that in the *Montgomery Ward case*, whereas the majority opinion of your own regional labor board for the sixth region states definitely that the action must be justified by the urgency of the situation and the effect on the prosecution of the war.

And they apparently did not find that, because they denied and refused jurisdiction.

Mr. DAVIS. Whatever they said in the opinion, Mr. Dewey, the fact was that the majority decided that the subject matter of the dispute was exclusively within the jurisdiction of the National Labor Relations Board and if that is true, the War Labor Board cannot handle it, no matter how much trouble it may have been threatening or whether it threatens trouble or not.

I see your difficulty there.

Mr. DEWEY. It even covers that. I will read the whole portion of the paragraph.

The Board's majority found the answer to that question in part in the Garrison memo of May 27, 1943, section d, in which it appears that the Board will not ordinarily place its order "on top of" a National Labor Relations Board order. It will only do so if that course appears necessary in order to prevent a serious interference with the effective prosecution of the war.

Therefore, they did not find such a substantial interference with the war effort and hence they refused jurisdiction.

Mr. DAVIS. I can see how you get confused about that, Mr. Dewey. We have no concurrent jurisdiction with the N. L. R. B., and the question has arisen before us and been the subject of a good deal of discussion as to whether nevertheless we should, in an urgent case, add whatever weight we have to order of the National Labor Relations Board in trying to get it carried out promptly to avoid a strike.

For instance, an order of the National Labor Relation Board you have a right to review in court. It takes a long time. You can imagine a situation—in fact, we had one once which was so critically important that we ordered the company to comply with the decision of the National Labor Relations Board, trying to reserve to them, nevertheless, a right of review which they had under the law.

Now, that is a pretty drastic thing to do. And what the Board subsequently said in this document referred to was that we would not put our order on top of the N. L. R. B. order except in the most drastic or exceptional cases.

Mr. DEWEY. It doesn't say "most drastic." It says it would not do that unless it appeared necessary to prevent a serious interference with the effective prosecution of the war.

And I am still poking along on the idea that there is a serious interference with the war effort in either *Sears, Roebuck* or *Montgomery Ward*. And if there was, I don't see why the same treatment was not accorded to both companies, because they are doing the same business exactly and selling in the same territory, and for 30 or 40 years they have been competitors.

Mr. DAVIS. I am trying to make clear to you, and I am sorry if I do not do it, that we have no concurrent jurisdiction with the National Labor Relations Board.

This *Sears, Roebuck case* is before us on appeal, but I have not been into it. It was definitely a case within the jurisdiction of the National Labor Relations Board and the question in such a case is whether we should take this very drastic step of adding our orders to theirs.

Now, in the *Montgomery Ward case*, there was nothing of the kind. The case was a dispute about wages, hours, and working conditions and not within the jurisdiction of the National Labor Relations Board at all. Nobody had jurisdiction of it but us. So it is on the subject matter not the personality that the two decisions rest.

As I say, I can see your confusion, but I have now stated the situation, and I hope you understand it, sir.

Mr. DEWEY. I have listened with deep interest because I know my experience and knowledge of this as compared to yours is almost nil.

But at the same time there has been brought up the fact that a strike at *Montgomery Ward* would substantially interfere with the war effort, and I cannot see why a strike in a similar company that is known to be a competitor, and who, according to the catalogs and evidence, do sell the same things.

There must have been a great emergency, as you say, in the *Montgomery Ward case* to have caused to be ordered the seizure by soldiers. Who ordered the seizure by soldiers?

Mr. DAVIS. I think you had better ask the Attorney General that, Mr. Dewey.

Mr. DEWEY. All right, sir. May I ask you this: Did you recommend it?

Mr. DAVIS. No, sir. You understand the procedure, do you, in these cases? We refer the case to the White House. They, thereupon, if they are going to act, prepare the Executive order. It is under the control of the Bureau of the Budget.

The different agencies of Government concerned are consulted, and the matter is brought to a head through the Bureau of the Budget.

We are consulted, of course—in this case, Mr. Jesse Jones who was going to do the seizing and the Bureau of the Budget, and so on. The Executive order in this case called upon Secretary Jones to do the seizing and contained a paragraph which is usual in Executive orders, that in case of need the officer who seized might call upon the other officers of Government, including the Secretary of War, for aid and assistance.

I have seen that Executive order, so I know that was the form of it.

Then, all I know about the rest is about what I read in the papers, that they got out there, Mr. Wayne Chatfield Taylor and the Attorney General, and met with this resistance, and somebody—I don't know who—called upon the Secretary of War for aid and assistance to effect possession.

That's all I know about it.

Ordinarily, you see, in a case like this Hummer plant that was seized, a Montgomery Ward plant, that was seized directly by the Army.

Mr. DEWEY. I understand that that is covered by the act, and there have been other similar seizures, but we get back to my old query of the substantial interference with the war effort by a merchandising house, one of which was seized by soldiers and the Board refused jurisdiction of the other. There has been a great deal of testimony—

Mr. DAVIS. That remark ought not to go unchallenged, Mr. Dewey. I assume you and I both have the same motive, that of trying to get at the facts.

Mr. DEWEY. That is true.

Mr. DAVIS. This case that is up before—

Mr. DEWEY. And to see if we can make the law better, or if we can help in any way to—

Mr. DAVIS. Win the war.

Mr. DEWEY. That is quite correct.

Mr. DAVIS. In this case of Sears, Roebuck there had not been any strike, as I recall it. It is one of their plants, and it was a very much smaller case in the first place.

But look. Here the question before them was Would they use this very extraordinary power, perhaps greater than the Board really has; that is, the power to put its order on top of the National Labor Relations Board which had primary jurisdiction?

I know this, Mr. Dewey, that we have warned the regional boards not to do that except in the most extreme cases, for obvious reasons. It is a very drastic thing to do. Now, that was that case.

The other case was just a collective-bargaining proposition. Nobody had jurisdiction but ourselves. There was no question about our jurisdiction except this question, does it interfere with the war effort? And I can say to you, Mr. Dewey, and if you come and sit with me I can prove it to you, that no one who has sat where I have sat, could have any doubt at all that the Montgomery Ward dispute would adversely affect the war effort if it was not stopped. I know that and I can prove it to anybody who wants to go over the records.

And if anybody is going to take the risk to our war effort of letting a dispute that involves 78,000 people go unattended and permit them to go out on strike, they will have to get somebody else besides me to do it.

Mr. DEWEY. I appreciate that, Mr. Davis, and I don't think that either you or I see eye to eye on the matter, but it is at the same time true that you have stated that you look to Congress for adequate legislation, and that is the purpose of this inquiry, and I hope to keep on that, but naturally we have to bring up these points.

Mr. DAVIS. Yes.

Mr. DEWEY. I have here some matter we obtained from the Library of Congress, the legislation reference theories and data on sympathetic strikes, the workers involved, and the percentage of the total during the years 1941, 1942, and 1943, and I would just like to read into the record to show that these sympathetic strike movements are diminishing and have diminished since 1941.

In 1941, there were 143,488 workers involved in sympathetic strikes, or 6.1 percent of the total. In 1942 that had fallen from a figure of 143,000 to 7,047, or eight-tenths of 1 percent total, and in 1943 there were only 510 workers involved in sympathetic strikes, or less than one-tenth of 1 percent of all persons involved in strikes.

So this matter of fear, with all honor to our workingmen, shows that they are not carried away on sympathetic strikes, so for that reason I think one of the dangers that has been spoken of in this particular case, the spread of the strike, is not as present as it has been said to appear.

I wish to thank you, Mr. Davis, for putting up with my rather awkward questioning, but I am only trying, as all are trying to do, to find a proper solution to this, and I hope before the hearings are over that we will.

Mr. DAVIS. Thank you, Mr. Dewey. Would you care to have my comment on that sympathetic strike matter at all?

Mr. DEWEY. Yes; if the chairman will permit.

The CHAIRMAN. Go ahead.

Mr. DAVIS. You see, today we have the assurances of the international organizations that they will not permit a strike. The strikes that do occur are wildcat strikes, and while, as I say, there is as much human nature in one man as there is in another, if not more, the fact is that we have been most loyally supported by the national organizations in the no-strike plan.

And there are many reasons.

Now, you can't spread a sympathetic strike very far if the national or international organization is opposed to it. You see what I mean?

In this case, the national organization was not opposed to the strike that occurred after Montgomery Ward refused to comply with the order of the Board, and the strike had already spread to one other plant and threatened to spread to all of the Montgomery Ward plants.

Mr. DEWEY. You say to all. As to the Hummer plant, there is no relation there, is there?

Mr. DAVIS. I was not referring to the Hummer plant. It was the strike spread to Kansas City, although there was a strike at Hummer. But the point I was making is this: Ordinarily when a war is

on and a strike occurs, it is immediately repudiated by the national organization. We call on the national organization for help to stop it, and they do stop it. It is localized tremendously.

In this case, since the company had defied our order, or seen fit not to comply with it, we could not call on the national or international organization to call off the strike, and it was spreading to the other places where the same organization represented Montgomery Ward.

In addition, there were sympathetic strikes already going on among the truckers.

Mr. DEWEY. That was called off.

Mr. DAVIS. That was called off. All right, but these things are like that. It was called off. The thing didn't last very long.

Mr. DEWEY. That is all.

Mr. MONRONEY. I wish you would develop for me a little more, and perhaps for the other members of the committee, the maintenance of membership. You have clarified pretty well the difference between a union shop and a closed shop, but I don't believe you went into the other alternative under your free-bargaining system before you had the no-strike pledge.

What would happen in lieu of the maintenance of membership agreement?

Mr. DAVIS. Well, the maintenance of membership agreement was in existence before the War Labor Board came into existence, or the Mediation Board, and it had different forms.

One of the earliest forms that I know of was this: You would have a place where the union was asking for the union shop at a time when perhaps they had a majority, but not all of the people in the shop. They would work out with the company this kind of a compromise. They would say, "Listen, we agree to maintain present union status"; that is, the company would agree to hire as many union men as they lost so that the union's proportion to the total membership would remain. That was by agreement and that is what I meant by maintenance of membership, and that was an old form of contract.

And another, and a simpler form was where they simply said that any man who is now a member at the date of signing of the contract—mind you, these contracts are negotiated by the union—we are talking about plants where the union is a certified bargaining agent under the National Labor Relations Act—they would agree that any man who was then a member of the union would have to remain a member the union so long as the contract lasted, for the year or the term of the contract. That was a bargain made between the union and the company. That was all.

I said, and I am ready to say again, that that contract was a perfectly democratic and a fair-minded thing, because the man who went into the union—voluntarily, we assume—were not being unfairly dealt with according to American ideas, as I understand them, if the majority of the union members voted for this maintenance of membership plan.

There was no reason in good democratic procedure why the minority should not go along. They joined the union. The majority of the union voted for a contract; that was the function of the union, and the contract was binding on them.

I hope that I am as alert to protect my constitutional rights as any American citizen. I regard that as good democracy and I said so when this matter was under discussion, and in the first two or three cases we ordered the maintenance of membership in that old-fashioned form.

But we had some industry men on the board who were not to be sneezed at, men who know how to present their points of view with great force and vigor, and they wore us down to a point where I said, "All right, I will go one step further with you. I will not ask these people to rely on the good democratic principle of majority vote in the union, which they voluntarily joined. I will go along and see that each individual member of the union will be given the opportunity when this contract is presented, to say if he wants to 'I am not going to be bound by that; I am going to get out of the union'."

And that is what came to be known as the 15-day escape clause. And history has shown that you can put in a thimble all of the citizens of the United States who have escaped under that provision.

Out of the hundreds of thousands of men who have been bound by that contract, the number of them who have taken advantage of that 15-day period would not fill a pipe.

Mr. DEWEY. May I interrupt on that? What is the reason that industry—I have often wondered about it—objects so to the maintenance of membership?

Mr. DAVIS. That is an awfully good question, Mr. Dewey. I wish the Lord in His power would tell me the answer some day. I know some of it. These matters are emotional.

Mr. DEWEY. Are what?

Mr. DAVIS. Full of emotion. I don't want to say anything about Montgomery Ward, particularly in disparagement. I come from a part of the country, as a matter of fact, where these upstanding individualists are thought of very highly, but we are in a war.

Mr. DEWEY. They are not the only ones.

Mr. DAVIS. No; they are not the only ones, but they typify something.

In the first place, they said, "This is a closed shop." I tried to argue that. The newspapers all over the country said, "It is a closed shop." Mr. Davis pretends it is not a closed shop, but it is a closed shop." I said, "It is not a closed shop because nobody is bound to go along with it unless they want to."

And Montgomery Ward said, "This is a closed shop," and when we said, "No," they said, "It leads to a closed shop."

Then, they had a vote out there and we put into effect a maintenance of membership clause which they said led to a closed shop, and at the end of the year they came along and said "the union membership has been reduced to 20 percent," and if I may say so in the presence of this committee, that is a hell of a closed shop.

I tell that in answer to your question, Mr. Dewey, because the minds of men do not work straight on this subject, and the reason they do not is fear, fear of what it might lead to, and they don't know what that is.

And one of my favorite expressions is that it is only the unknown that terrifies, and in this matter it is a feeling of terror; and I say to you that when we got this job the air was full of terror on this

subject. It was the sole topic of discussion practically at the industry-labor meeting.

Everybody agreed right away on the first two points, but they couldn't agree on this, union status. It would have wrecked us. It was almost the exclusive topic of discussion before the War Labor Board for a considerable period of time after it was set up.

We worked out this compromise by give and take, day after day, and they were doughty men on that board, fellows like Roger Lapham, George Mead, and people like that, that knew how to make an argument, and we fought it back and forth. And there are equally good men on the labor side, Tom Kennedy, Van Bittner, Bob Watt, people of that type. We had it back and forth. And finally we agreed to this compromise with the 15-day escape period, as we called it, and I don't mind telling you—and I can say it because I am not claiming any credit to myself for it—I have already stated to this committee what my position was about it—but this final solution of the 15-day escape clause is, in my judgment, the greatest piece of industrial statesmanship that I know of in this country, or in any other, in my time or the times that I have read about.

It put on the shelf for the duration of the war a dispute that had all the heat and fear of emotion that any dispute could have. It has done no injury to anyone; it does not lead to a closed shop; it has satisfied the demands for union status for the period of the war; and anyone who undertakes to fool with it is just exactly like a fellow that goes and puts a match to a fuse on a bomb when his superiors and friends have gotten the bomb nicely packed away on the shelf where it can't possibly explode.

If I speak somewhat heatedly on the subject, it is because I have been through it and know what I am talking about, and I say to the Congress and to this committee that this agreed solution hammered out in a tripartite group of sincere men, was as sound a piece of statesmanship as I have ever witnessed, and you had better leave it alone.

I didn't really answer your question, Mr. Dewey.

Why these people say it is the same as a closed shop, or that it leads to a closed shop, I don't know. But I am glad to tell you this: That the people on the industry side have begun to look at it statistically and to examine whether it does lead to a closed shop, and we have had experience enough with it so that the statistics amount to something, and they are finding out that it does not lead to a closed shop at all.

And my prediction to you is that when the war is over, American industry will come to the Congress—and I make this prediction advisedly—and say to the Congress, "Will you not please enact into the law the provisions of the maintenance of membership clause that was developed under the War Labor Board?"

That is exactly what is going to happen because as soon as the war is over the fight is on again, and this is the best quietus on it that could possibly be imagined.

I know a prophet is without honor, but I make that prophecy.

The CHAIRMAN. Thank you, Mr. Davis.

The committee will take a recess until 10 o'clock tomorrow morning. (Whereupon at 4:50 p. m., the hearing was recessed to 10 a. m., Tuesday morning, May 23, 1944.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

TUESDAY, MAY 23, 1944

HOUSE OF REPRESENTATIVES, SELECT COMMITTEE TO INVESTIGATE MONTGOMERY WARD SEIZURE, Washington, D. C.

The select committee met, pursuant to recess, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Rampseck (chairman) presiding.

Present: Representatives Ramspeck (chairman), Clark, of North Carolina; Byrne of New York; Monroney, of Oklahoma; Dewey, of Illinois; Elston, of Ohio; and Curtis, of Nebraska.

The CHAIRMAN. The committee will come to order, please.

We have this morning Mr. Gerard D. Reilly, member of the National Labor Relations Board.

Mr. Reilly, we will be glad to have a statement from you covering the proceedings before your Board with reference to the Montgomery Ward plant at Chicago, both the original proceedings and the recent elections.

STATEMENT OF GERARD D. REILLY, MEMBER, NATIONAL LABOR RELATIONS BOARD, WASHINGTON, D. C.

Mr. REILLY. Mr. Chairman, and members of the committee, I understood from the committee that you wished me to testify today with respect to the chronology of the events which culminated in the seizure by the Department of Commerce of the Chicago operations of Montgomery Ward & Co. plant and its subsequent return to private ownership following an employee election conducted by the National Labor Relations Board on May 9, 1944.

The first case involving any of the Chicago operations of this company occurred in 1940 when the Board directed an election in the Schwinn warehouse operated by this company in Chicago.

In that proceeding, the union, known as the United Mail Order Warehouse and Retail Employees Union, Local 20, affiliated with the C. I. O., sought a bargaining unit confined to the warehouse. This was granted over the company's contention that the employees in the mail-order house should also be included in the unit, the Board noting that organization of the company's employees in the Chicago area had extended to that date only to the employees in the warehouse unit. The union won the subsequent election and was certified on August 26, 1940.

About a year later, on September 9, 1941, to be exact, the Board entertained two petitions covering the mail-order house and the retail department store, respectively, filed by the same union.

The union subsequently carried the election in both units and was certified on February 28, 1942.

Meanwhile the union had filed charges that the company was violating section 8 (1) and section 8 (5) of the National Labor Relations Act.

Section 8 (1) regards interference with concerted activity, and section 8 (5) requires an employer to bargain with the union representing a majority of the employees in the appropriate bargaining unit.

On February 26, 1942, the Board issued a decision finding that the evidence did not support these allegations, and dismissed the complaint.

These three units that I have mentioned include the great bulk of the employees in Chicago.

The union subsequently organized some employees in the administrative branches, that is, the employees who come within the Nation-wide scope of the corporation's business, rather than the retail mail order and distributing end in Chicago itself. These four departments were the photographic department, the maintenance department, the printing department, and the display factory department.

In these units no elections were held, the company recognizing the union as the bargaining representative on the basis of a card check.

On June 2, 1942, shortly after the certification of the retail department store, the union and the company were unable to agree on the terms and conditions covering the three major units, the photographic department and the maintenance department.

The War Labor Board took jurisdiction of this dispute, and, on November 5, 1942, directed that a contract be executed between the union and the company containing provisions for maintenance of union membership.

The company protested this order, but, at the direction of the President, the company subsequently signed a contract embodying these terms during the month of December 1942. This contract was to run from year to year, subject to a 30-day notice clause giving either party the right to terminate the contract upon written notice 30 days before the expiration date, the expiration date being December 8.

Early in November 1943, just a little more than a month before the expiration date, the company gave notice of termination, and at subsequent conferences took the position that the union no longer represented a majority in the two principal units, that is the mail-order house and the retail store, and consequently was not entitled under the Wagner Act to a contract making it the exclusive representative for the purpose of bargaining under section 8 (5) or for the purpose of having a maintenance of membership agreement under the provisions of section 8 (3).

Since there has been some criticism as to the failure of our Board to conduct an election at this stage of the dispute, a word may be appropriate with regard to the legal situation at that time.

Our rules do not provide for employer petitions except where an employer is faced with conflicting claims by two or more labor organizations. Consequently, a union which believes it has a majority, and is therefore entitled to be the collective-bargaining agency, has two courses open to it.

When employers refuse to renew agreements on the grounds advanced by this company, the union might, if it felt it had a majority, file a petition for an election during the last few weeks before the contract was to expire, to prove its legal right to act as bargaining agent in the negotiation of a new contract.

If it felt that the company was acting in bad faith in not recognizing its claims, it could file a charge of unfair labor practices under section 8 (5) of the act, which would be part of its case to show it had retained a majority, and that the company was refusing to bargain with it.

The Labor Relations Board had nothing before it until February 14, 1944, about a month after the War Labor Board issued its order of January 13, which Mr. Davis explained yesterday.

To go back to November 1943: During this month, further conferences between the company and the union proved fruitless and the Conciliation Service certified the dispute to the War Labor Board which took jurisdiction on December 6, 1943, 2 days before the contract expired, and summoned the parties to a public hearing 2 weeks later.

As a result of the hearing, a majority of the War Labor Board concurred in an opinion written by Chairman Davis, in which he found that the only question in dispute was one of representation.

In passing, Mr. Davis noted that the question was a close one. It appeared that there had been a large labor turn-over at the plant, and at the hearing the company stated that less than 16 percent of the employees in the disputed units had been on the pay roll and eligible to participate in the elections in 1942. The union rejoined by showing that despite the turn-over it had handed the company at different times during the period of the contract about 10,000 check-off cards.

The War Labor Board's order required the company to extend the contract in the interest of preserving the status quo until the representation question was finally disposed of.

The order also required the union to petition the National Labor Relations Board for an election within 30 days, and pursue the matter with diligence or the obligation of the company to comply with the extended contract would cease. This order of the War Labor Board was served on the parties on January 15, 1944, about 5 weeks after the contract had expired.

The company never complied with the portion of the War Labor Board's order relating to the extension of the contract.

The union, on the day prior to the expiration of the 30-day period, filed with the National Labor Relations Board an unusual document entitled "Petition for Recertification," in which the union argued that it should be recertified for all the Chicago units, its theory being that a presumption of majority status existed, or should be deemed to exist in this case because of certain unfair and hostile acts directed at the union by the company, which were recited in the petition.

This document was received in Chicago on February 14, 1944, and because of its novel character, it was referred to the Labor Relations Board in Washington.

Mr. CLARK. May I interrupt? I understand you to say that the presumption arose because of certain practices by the corporation.

Mr. REILLY. I said certain unfair labor practices, Congressman.

Mr. DEWEY. I would like also to interrupt for a moment. You say "an unusual document."

Mr. REILLY. Yes, sir.

Mr. DEWEY. Why was it unusual?

Mr. REILLY. We have two major kinds of proceedings, complaint cases and representation cases, and we have special forms for use in each case.

If a union wishes to be recognized as a bargaining agent pursuant to an election, we have a petition form to fill out. If it wishes the Board to issue a complaint on unfair practices, we have a form for filing charges.

This was on neither of these forms. It was a bulky document and looked like a brief, but it was entitled "Petition for Recertification."

Mr. DEWEY. You mean by that that it is unusual for a union to ask for a recertification if there is any doubt in the matter, or is it usual for a union to consider that they have a right for the continuation of a contract?

Mr. REILLY. In most cases, unions, by showing cards or membership lists when the matter comes up for renegotiation, are able to get the employer to continue to recognize it as the bargaining representative.

In the rare cases in which the employer refuses to do so, the union files a petition, or if the union feels it has lost its majority and the loss is due to the employer's unfair labor practices, it will file a charge and the matter, of course, will be adjudicated then.

But, both proceedings, of course, require a hearing before the Board does anything.

The papers in this case, because of their unusual character, were studied with some care by each of the Board members.

The Board, in its decision, stated that accusations of unfair labor practices designed to result in an order for bargaining could not be brought before it in this manner, and pointed out that the proper method was for the union to file charges with the regional office.

The Board also considered the possibility of treating the document as a petition for investigation and certification of representatives under section 9 (c).

It reached the result that while a good deal of the language in this petition was extraneous, it did contain the information required by the forms for petition, and that all parties involved were entitled to a hearing. An order was drafted to this effect and the case remanded to the regional director on March 6, 1944.

Shortly thereafter the Board was advised by its regional office that a conference between counsel for the company and counsel for the union had failed to bring about an agreement for a consent election, each of the parties taking a different view as to what the appropriate bargaining unit should be. We were later advised that the union would request the Board to permit it to withdraw its petition.

During the same month, March, the War Labor Board was informed that its order of January 15 was not being complied with and, on March 29, it held a public hearing to determine whether the union had complied with its part of the order, and to inquire into the company's noncompliance.

On April 5, 1944, it issued a new order requiring the company to comply and relieving the union of its duty to press its application for

a determination of the question of representation until the company resumed contractual relations with it. The company rejected this order also.

One week later, the union called a strike and on the next day, April 13, the Board referred the matter to the President, recommending that the President issue an Executive order taking over this plant.

On April 24, 1944, the President sent a telegram to Montgomery Ward & Co. urging compliance with the War Labor Board's order, and stating in his telegram that the National Labor Relations Board stood ready to hold an immediate hearing on the petition for election.

Since the company still would not agree, the President, on April 26, issued an Executive order directing the Secretary of Commerce to take possession of the plant.

The accompanying release from the White House said that a hearing on the proposed election would begin on Saturday, April 29. This Executive order was issued on Wednesday, and on Saturday of the same week our hearings began before a trial examiner in Chicago.

At this hearing, the trial examiner succeeded in getting counsel for both parties to agree to waive the provision giving each side 7 days after the hearing in which to file briefs, and he also succeeded in getting a stipulation executed specifying the standards of eligibility for part-time employees.

In other words, they treated any employee as eligible to vote if he worked an average of 20 hours for each of the 6 weeks preceding the pay-roll date.

This hearing was completed on Monday evening, May 1. The trial examiner flew back to Washington that night, bringing the later portion of the transcript of the hearing with him, (the earlier part had already been examined in Washington) and on the next day the Board issued an order providing for elections to be held in two different bargaining units and giving the regional director 1 week in which to conduct this poll.

The election was held May 9, 1944. When the polls closed that night, the Government turned the plant back to the private management pursuant to an announcement made by the President earlier in the day.

The ballots were then counted in the presence of company and union observers.

The tallies showed that of the 4,737 eligible voters in unit 1, the major unit consisting of the retail house, mail-order house, and Schwinn warehouse, there had been 3,905 votes cast, 2,340 for the union, and 1,565 against.

In unit 2, there were 157 eligible voters; 128 had cast valid votes of which 100 were for the union and 20 against. There were also about 300 ballots which were cast under challenge, and not counted. These ballots were never counted, nor were the challenges passed upon, because the margin was sufficient so that it would have been academic.

Neither side filed any objections to the fairness of the election or to the accuracy of the tally.

I might say, the day preceding the election, the company had written a letter saying it might wish to protest the election because of the fact that the Government was still in possession or would still be in possession of the plant on the day the election was held, and that,

therefore, these persons might be deemed to be Government employees.

The company, however, never filed any formal objection to this election, although under our rules we allow 5 days after an election for either side to file objections to the conduct of the election or the eligibility of any voter.

Accordingly, after the expiration of the time allowed for filing the objections, during which period none had been filed, the Board, on May 16, certified the union as collective bargaining representative in the two units that it previously had designated as appropriate.

In order that the committee may fully appraise the incident in its relationship to the National Labor Relations Act, I should like to make two observations before I close. One is that the prior history of the company, with regard to its legal obligations under the National Labor Relations Act, cannot be ignored in weighing the merits of this dispute, and the second is that the sequel to the matter has given rise to the most explosive issue in labor relations with which the Government has been faced for a long time, that is, the issue of the possibility of petitions by employers for elections.

Mr. DEWEY. Would you repeat that again? I didn't quite hear what you said.

Mr. REILLY. Yes. I said I thought that, in order for the committee to fully appraise the incident in its relationship to the National Labor Relations Act, I would like to make two observations. One was that the prior history of this company, with regard to its legal obligations under the National Labor Relations Act, cannot be ignored in tracing the origin of this dispute, and the second is that the sequel to this matter has given rise to what appears to be one of the most explosive issues in labor relations that the Government has faced in a long time, namely, the arrangements to give employers a chance to petition so as to avoid delays in cases of this character.

I would like to say this about the first point. The unfair labor practice case to which I referred in the earlier part of my testimony was not the only one in which this company has been involved. In that instance the Board found that the evidence did not sustain the allegations, but there have been other cases in which the company has been found to have violated the law.

In a case reported in volume 31 of our reports, dealing with the Kansas City plant of the company, the Board found that the corporation had violated section 8 (1) of the act

by making known to the employees a marked hostility toward the organizational activity of the union and an intention to prevent its success, by disparaging the union, by indicating that employee opposition to the union would win its favor, by threatening to close down the mail-order house and the retail store if the union organized the employees, by attempting to form a company union as a means of combating the union by soliciting memberships for the company union,

and by attempting to learn the identity of employees soliciting memberships for the union.

In that case, the Board also found that the company had discriminatorily delayed the reinstatement of one employee, but had not discriminated with reference to three other employees.

Mr. CURTIS. May I interrupt? Is it your contention that that had anything to do with seizure in Chicago?

Mr. REILLY. What I meant was that I think the company's position that it doubted the union's majority might have been accepted with better grace by the union and would not have created this very bitter feeling which grew up finally in the strike, had it not been for the background of violations of the Labor Relations Act in various branches of the company, involving not only this union but also other unions.

The Portland, Oreg., plant was involved in similar proceedings in 1937, resulting in a finding to the effect that the company had intimidated and coerced its employees not only by antiunion statements, but also by maintaining a system of espionage and by the discriminatory discharge of 23 employees.

This order was appealed to the Circuit Court of Appeals for the Seventh Circuit, which enforced the Board's order in full except with respect to 2 of the 23 employees.

In 1940 the Portland plant was again cited, this time on charges of three A. F. of L. unions, the warehousemen's union, the teamsters' union, and the Retail Clerks' International Protective Association.

In 1941 a decision was issued finding the company had violated section 8 (1) and section 8 (5) of the act by refusing to bargain in good faith with the union, in that it had refused to embody any agreement which might result between itself and the union in a written contract.

This order was enforced in full by the Circuit Court of Appeals for the Ninth Circuit.

The company was also found to have violated the act with respect to an A. F. of L. union at its St. Paul, Minn., plant. The Board found that the company had inaugurated and maintained a system of espionage involving the employment of labor spies, and that certain supervisors had made antiunion statements, but dismissed the charges of violation of section 8 (3). The entire order was sustained by the Circuit Court of Appeals for the Eighth Circuit on December 2, 1940.

Undoubtedly this background of unfair labor practices, combined with the company's noncooperative attitude toward the War Labor Board, was an important contributory factor to the Chicago union's resentment when this latest dispute arose, and it was this feeling which played a large part in causing the union to strike.

The other sequel to the company's attitude at the threshold of the dispute was a series of labor disputes in Chicago resulting from the refusal of employers to continue to recognize unions as legal bargaining representatives at the expiration of their contracts.

The number of these cases was apparently so disturbing to the War Labor Board that, shortly after its January order in the *Montgomery Ward case*, the Board deviated from its position which it had quite properly announced there, namely, that a union whose majority status was in dispute could only resolve such question by having recourse to the Wagner Act.

In this case, entitled "Chicago Transformer Corporation," the employer had declined to enter into negotiations for a new contract without proof of the union's current majority. The parties had agreed among themselves to a card check, but after the card check was made they were in dispute as to whether the cards disclosed a majority or minority of union employees.

This decision served to emphasize a defect in our regulations, since disputes of this sort could not be resolved by the War Labor Board, and yet employers might be bound by its orders to recognize unions no longer possessing a clear majority as the bargaining representative.

Consequently, a situation was created which could bring employers who desired to conform with War Labor Board orders into conflict with the National Labor Relations Act. This created an administrative problem for the two agencies, and I would like to explain why it was necessary to meet it by some regulation.

A provision frequently inserted in War Labor Board orders is one requiring collective-bargaining agreements to contain closed shop or maintenance-of-membership clauses. It must be remembered that the right of a union to represent all employees in a bargaining unit and to make contracts requiring union membership as a condition of employment is very carefully defined in the National Labor Relations Act, for such representation involves not only relations between unions and employers but also affects the rights of third parties, namely, the individual employees in the bargaining unit.

Under section 8 (5), which is the portion of the act requiring an employer to bargain exclusively with the union representative, the duty to bargain with any union as exclusive representative is present only if the union is the representative as defined by section 9 (a).

Moreover, section 8 (3), which is the main portion of the Wagner Act and which prohibits discharge or discrimination against employees for the purpose of encouraging or discouraging union membership, is limited only by a proviso giving effect to a closed shop or maintenance-of-membership agreement with the exclusive representative as defined by section 9 (a) at the time the contract is made.

In other words, the test of the legality of such contracts is not the existence of a union majority at the time of the original certification, but a majority as of the date of the execution of the contract or of a renewal of the contract.

Faced with the problem of avoiding the placing of employers in such a dilemma, to which I have referred, as well as the problem of avoiding delays in wartime disputes which was noticeable in the *Montgomery Ward cases*, this Board 2 weeks ago formulated a proposed rule which would give employers with respect to whom the War Labor Board had taken jurisdiction the right to file a petition for an election with our Board within 5 days if they entertained a bona fide doubt with regard to the legal right of the union to be recognized as bargaining representative for the purpose of negotiating a new contract.

Under our procedures we do not hold elections except where a real showing is made that a genuine question of representation exists.

This proposal was hotly opposed. None of the labor representatives present, however, were able to offer a solution as to how the problem of avoiding possible conflicts between War Labor Board orders issued pursuant to the Transformer doctrine, and the provisions of the Wagner Act could be met except by the adoption of such a rule. Of course, it may be that some other arrangements would be equally feasible and the problem is being examined in consultation with the War Labor Board.

The C. I. O. has even gone so far as to issue a public statement urging its affiliated unions and local agents to protest to the ordinance

officers of the War and Navy Departments that the adoption of such a rule will mean stoppages and interruptions of production, although it would seem on the face of it that unions which really do command the support of the majority of workers need have no fear of the results of a secret ballot.

The problem, as you see, is not unrelated to the subject matter of the case before you, and since the committee is examining all phases of the question, I wished you to know that we are addressing ourselves to the problem with the hope of finding a solution at an early date.

Thank you very much, Mr. Chairman and gentlemen.

The CHAIRMAN. Mr. Reilly, as I recall your statement, the controversy which we are investigating did not reach the National Labor Relations Board until February 14 of this year; is that correct?

Mr. REILLY. That is correct, Mr. Chairman.

The CHAIRMAN. Up to that time the National Labor Relations Board, which administers the Wagner Act, had no official knowledge of the new controversy between Montgomery Ward and its employees in the Chicago plant?

Mr. REILLY. Yes.

The CHAIRMAN. Now, on February 14, as I recall it, the union did file what you have described as an unusual document which the Board construed to be a petition for an election.

Mr. REILLY. We construed it to be a petition for investigation and certification for representation.

The CHAIRMAN. As I understand it, there have been some cases that have gone to the appellate court in which the courts have held that once a union is certified as the exclusive representative of the employees of the given employer, that presumption holds until action shows they are not the representative of the majority. Is that correct?

Mr. REILLY. The presumption holds within what the courts call a reasonable period after the certification if there has been no bargaining; that is, possibly a period of a year or so.

Then the courts have also held that where the loss of the union's majority is due to unfair labor practices that the Board is justified in finding that the union would have continued to be the majority representative had the unfair labor practices not occurred.

There are no cases which hold, however, that where there has been bargaining, where a contract has been made and has expired, that that presumption is a conclusive presumption.

It might be a presumption, of course, that would be entitled to weight, but it would be rebuttable by evidence showing that the union had, in fact, lost its majority.

The CHAIRMAN. Are there any cases that have gone to the appellate courts where the courts have held that the certification raises a presumption of continued right to represent the employees?

Mr. REILLY. You mean in the absence of unfair labor practices?

The CHAIRMAN. Yes.

Mr. REILLY. There are cases. The *Century Oxford case* and *Apalachian Electric case*, in the circuit court of appeals, are leading cases on that point.

In both those cases, after certification had occurred but where bargaining did not culminate in a contract, a petition was circulated by a

dissenting group of employees—I think in both cases a majority had actually signed it—and the court there said that the employers should deem the certifications based upon a secret ballot as establishing a presumption of continued majority, rather than the signing of these petitions.

In both cases the petitions, which the employer treated as excusing him from any further duty to bargain, were circulated before any contract was made and within less than a year of the certification.

The CHAIRMAN. Now, under the first regulations of your board, Montgomery Ward had no right in this case to petition for an election, did it?

Mr. REILLY. That is correct, Mr. Chairman.

The CHAIRMAN. So that the only way an election could take place, under the present regulations of your board in this case, was for the union to petition for an election; is that correct?

Mr. REILLY. Yes.

The CHAIRMAN. And that it was directed to do by the War Labor Board?

Mr. REILLY. Yes.

The CHAIRMAN. And on the 30th day, the last day provided in the order of the War Labor Board, they did file this document which was later construed to be a petition for election, and the National Labor Relations Board handled that as expeditiously as possible, did they not?

Mr. REILLY. Yes, sir.

The CHAIRMAN. It was handled much more expeditiously than is normally the case?

Mr. REILLY. In most cases we allow the regional director 30 days after the direction issues in which to hold the election. Here it was directed to be held within 1 week after the issuance of the order.

The CHAIRMAN. Unless your rules and regulations are changed, there is no way that the National Labor Relations Board could have stepped into this picture in December and called an election, is there?

Mr. REILLY. No way at all.

The CHAIRMAN. Mr. Dewey?

Mr. DEWEY. I will reserve my time.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Mr. Reilly, following the line of examination by the chairman, suppose a union would never petition for an election. How would you ever get one?

Mr. REILLY. If a union never did so, an employer would never have to bargain with it, at least not up until the time of this *Transformer* case that I have spoken of recently.

Under normal times, if a union did not invoke its administrative remedy under the act, or did not file any charges in which it tried to prove its majority by a card showing, an employer would have no legal obligation ever to recognize it.

Mr. ELSTON. Well, now, you make your own regulations, don't you?

Mr. REILLY. Yes, we do, sir.

Mr. ELSTON. And you knew of the very acute and critical situation existing in the Montgomery Ward labor dispute?

Mr. REILLY. I don't think at that time that the case was considered one of national importance at all. It didn't become so until several months later.

Mr. ELSTON. When did it assume this national importance that threatened to upset the whole labor policy of the United States?

Mr. REILLY. There was nothing very much in the papers about that case until a month or two later, so there wasn't any particular reason why our Board should have been aware of its pendency.

We had read the decision in the Labor Relations Reporter and the other digests.

Mr. ELSTON. You mentioned the other cases the company had and you seemed to attach some importance to them, and you said because of those cases the union in Chicago had some resentment toward Montgomery Ward.

Mr. REILLY. Yes.

The CHAIRMAN. Didn't those cases to which you attach a lot of importance now, cause you to attach any importance to the dispute which arose clear back in November of last year?

Mr. REILLY. We would have attached importance to it, of course, if it had come to us, but there are so many hundreds of cases going on in the Conciliation Service at all times, that we had no knowledge that the company had refused to renew this contract. Our attention was not drawn to it.

Mr. ELSTON. That was officially brought to your attention on December 14, was it?

Mr. REILLY. Officially, on February 14, although we had seen the War Labor Board order of January 15.

That was reported in the papers around the 18th of January, and also reported in the Labor Law Digest, and we were aware then that, under the terms of that order, the union would very shortly either have to file a petition with us or else the company would be relieved of any duty of extending the contract.

Mr. ELSTON. You knew, didn't you that the only questions involved were, first, representation—

Mr. REILLY. That is right, sir.

Mr. ELSTON. And second, the claim of the company that the contract should not be extended beyond this expiration date which, I believe, was December 8, 1943. Those were the only two questions the company ever raised, weren't they?

Mr. REILLY. Yes, sir. We didn't know anything about them until we saw the actual text of the War Labor Board's decision.

Mr. ELSTON. And those are the only two questions that ever came into the case?

Mr. REILLY. That is right, yes.

Mr. ELSTON. Don't you know the company always was asking for an election?

Mr. REILLY. I am quite sure the company never wrote to us asking us to amend our rules.

Mr. ELSTON. Would you have amended your rule if the company had written?

Mr. REILLY. We might have after possible consultation with the other agencies involved, if that seemed to be the only way of settling it. Of course, I can't speak for the other members of the board on that question, but because of the impact of these cases we have given some thought to amending the rule, and if that case had been brought to our attention at the time as likely to result in an impasse, we might have amended the rule and held a hearing.

Mr. ELSTON. All you would have to do would be to get together with the other members of your Board and change your regulations?

Mr. REILLY. Yes; although when we make an important change in our rules, we usually give labor and industry a chance to be heard.

Mr. ELSTON. Why did you ever have it as an iron-clad rule that only the labor union could request an election?

Mr. REILLY. That goes back to the early history of the Board. I think the original reason why the Board did not grant the right of petition to employers was this: They were afraid the privilege might be abused in those days. The act was passed at a time, of course, when labor unions were relatively weak, and it might have been abused by companies filing petitions on the very day that an organizer came into the plant so that elections would be held prematurely. That has been one explanation advanced. I never thought there was much justification for that theory because you don't get an election automatically by filing a petition.

You have to show that a real question of representation exists.

In those cases, if the union was not claiming a majority, the employers' petitions could have been dismissed.

I think the real reason was this: An employer in peacetimes was not hurt by not having that right except in a situation where he was faced with conflicting claims of two unions, both contending they were the bargaining representatives. Then the only way out, if he wanted to avoid a jurisdictional strike, was to have the National Labor Relations Board resolve the question.

Accordingly, this rule which, from 1935 on, gave only unions a right to file a petition, was amended in 1939 or 1940 to give employers a right to file petitions where they had conflicting claims by two unions. The reason I say an employer was not hurt under normal peacetime procedures, is this: If he felt the union did not have a majority, he had a remedy. He just didn't have to bargain. So the union would have had to take the initiative by filing a petition itself or by filing a charge if it thought his attitude was frivolous and that it had a clear majority, and he was acting in bad faith.

That situation was changed a bit when the war came along and that is why I feel there is some reason for amending the rule now.

A good many of these disputes, if they are of much importance, are handled in the first instance by conciliators. They are laymen and they don't understand all of the legal questions involved in the Wagner Act, so when they are unable to get the parties together they, as a matter of practice, certify the case to the War Labor Board even though there may be some legal questions in the case and the War Labor Board always takes the position that these representation questions are not questions which it can handle, but, in this *Transformer case* the Board said that because of the certification they will assume that the union is still the bargaining representative for the purpose of negotiating a new contract.

That is likely then, unless there is some way of compelling either the union to resort to the Board or giving the employer a chance to resort to the Labor Relations Board, to result in a situation that produces a possibility of there being a contract made with a union which has lost its majority.

But the Board acted properly in the *Montgomery Ward case* and told the union: "If you want to be recognized as the bargaining

representative for negotiating a new contract, you have to exercise your remedy under the law and go to the National Labor Relations Board and file a petition."

Mr. ELSTON. When they did come to the National Labor Relations Board in February, you knew at that time the principal question was the claim of the company that the union was not the proper bargaining agent?

Mr. REILLY. Yes.

Mr. ELSTON. And you then had it within your power to order an election?

Mr. REILLY. Under the statute we would have had to have a hearing, and that is why we remanded this union petition to the regional director to conduct a hearing on it.

Mr. ELSTON. Had you realized that at that time it was an important case?

Mr. REILLY. Oh, yes; very important then.

Mr. ELSTON. You could have conducted the hearing yourself?

Mr. REILLY. In Washington?

Mr. ELSTON. Yes.

Mr. REILLY. We could have, but that probably would have taken longer. We had so many cases that came to Washington from exceptions to trial examiners' reports that we allow only half an hour to each party in a case. So the Board in Washington, for the last 5 years or so, has never heard any evidence. It acts more as an appellate body and the examiners act as trial judges and hear the witnesses.

Mr. ELSTON. You referred it to your Chicago regional office?

Mr. REILLY. Yes.

Mr. ELSTON. When did the report come back?

Mr. REILLY. We called the parties together—that is, the regional director did—to see if that might expedite things and if they could agree on the appropriate bargaining unit. There was a collateral dispute in the case. The company was contending that the election should have been held in several units, that is, one election in the mail-order house, one in the retail stores, and one in the Schwinn warehouse.

The union was contending that the whole Chicago operations were the appropriate unit.

Mr. ELSTON. How did you eventually resolve that—in favor of the union's contention or in favor of the company's contention?

Mr. REILLY. We rejected both positions and drew the conclusion that the appropriate unit was one which included the operations which were local to Chicago and Illinois. That is, the retail store and the mail-order house and the warehouse.

We concluded there should be another unit consisting of the photographic unit, the display factory unit, the printing unit, and the maintenance unit, because of the fact that they were concerned primarily with the operation of Montgomery Ward Co. as a nationwide business.

If the union had its way, we would have conducted an election in one unit.

If the company had its way, we would have conducted the election in four units.

Mr. ELSTON. The election before had been in four units, hadn't it?

Mr. REILLY. Three units. The four administrative units had been recognized on a basis of a card check.

Mr. ELSTON. The company recognized that itself, did it not?

Mr. REILLY. That is right.

Mr. ELSTON. So that previously you conducted an election in three separate units?

Mr. REILLY. That is right.

Mr. ELSTON. Why did you eventually combine them?

Mr. REILLY. The decision in August 1940 was the one which was directed to the Schwinn warehouse unit. In that case the decision of the Board said that it was possible that if there was a controversy about organization among the employees in all the Chicago operations, that the proper units should be the stores, mail-order house, and the Schwinn warehouse all combined. They said while that combination might eventually be appropriate, in the case before us there was only controversy as to the warehouse unit. They said the Schwinn warehouse was 5 miles away from the store and the mail-order departments that there was no interchange of employees and, therefore the warehouse people could be treated as a separate group on the extent-of-organization theory, but if there were organizational disputes affective between all employees, the appropriate unit could be inclusive.

Mr. ELSTON. So that on May 9 when the election was finally held the voters of these units were all scrambled and they all voted as one unit?

Mr. REILLY. Yes.

Mr. ELSTON. That is not the way they voted the first time the bargaining agents were selected?

Mr. REILLY. That is right, sir.

Mr. ELSTON. And you don't know how the votes would have gone had they voted separately, of course, do you?

Mr. REILLY. I understand there were about 500 employees in the Schwinn warehouse, and the union won by more than that, so actually it wouldn't have made any difference.

Mr. ELSTON. Was there any controversy in the Schwinn warehouse at this time?

Mr. REILLY. The company would have been willing to recognize the Schwinn warehouse, at least back in December—they would have been willing to concede the union still had a majority there, I understand. I am not sure just what their position was in the late stages of the case. Mr. Rockwell reminds me that they still conceded that at the hearing.

Mr. ELSTON. There wasn't any question at that time, was there, in the Schwinn warehouse, that the union was the bargaining agent?

I mean, it was recognized at all times that a great percent of the employees belonged to the union?

Mr. REILLY. Yes.

Mr. ELSTON. The company recognized it and was willing to accept the union as the bargaining agent?

Mr. REILLY. Yes.

Mr. ELSTON. And the only controversy was in the retail store and the mail-order house?

Mr. REILLY. Yes.

Mr. ELSTON. Since the only controversy pertained to those two places, why didn't you permit the election to be conducted solely in those two places?

Mr. REILLY. Well, because of the fact that our original direction of election, that is the one in the Schwinn warehouse, had indicated that after organization had taken place in all the units that the Board would be willing to regard the combined unit as the appropriate one.

Moreover, the contract which was expiring and which was the nub of the controversy, was not a series of separate contracts. That was a contract which included the Schwinn warehouse, the retail store and the mail-order house.

Mr. ELSTON. That same situation was true when you had the first election, when they were negotiating for the contract in the first instance. That situation was true and yet you permitted separate election.

Mr. REILLY. I perhaps didn't make myself clear, Congressman. At the time of the first election there had not been any contract at all. We give great weight in fixing a bargaining unit to the contract history, and unless some of the employees who are included within the contract unit are employees whom we would include as a matter of policy, such as supervisory employees or armed guards, we ordinarily treat the contract unit when the case comes back to us, as being the best evidence of what the appropriate unit is, since that is the way the parties themselves bargained.

Mr. ELSTON. The point I am making is this: The controversy in the beginning, before the contract was executed, was the same in one plant as it was in another.

Mr. REILLY. Before the contract was executed?

Mr. ELSTON. Yes.

Mr. REILLY. Yes.

Mr. ELSTON. And yet you recognized three separate and distinct bargaining agents.

Mr. REILLY. Three bargaining units.

Mr. ELSTON. And later on you accumulated all of them and had a vote of all of them.

Mr. REILLY. Yes.

Mr. ELSTON. And you let the people in the Schwinn warehouse decide questions in the mail-order house and the retail store. Do you think there is any justification of that change when exactly the same questions were again involved?

Mr. REILLY. The factual situation had changed a great deal. I should explain that it has been the practice of the Board for many years—and its decisions have been sustained by the courts—in finding appropriate bargaining units, to hold that separate branches of the company may be treated on the extent-of-organization theory as bargaining units, even though the Board may find eventually that a whole Nation-wide company unit is appropriate.

There are cases where when the first election came up it was contended that the appropriate bargaining unit was the entire company and the Board has said:

Well, if all the employees of a particular branch office or a substantial majority of them, want to have bargaining rights now, we will take that unit as an appropriate one and direct an election, even though ultimately we may decide that a system-wide unit is appropriate.

The same decision has been made with regard to many insurance companies which do business on a Nation-wide scale.

Mr. ELSTON. These decisions you are talking about were in full force and effect before the first contract was ever made, weren't they?

Mr. REILLY. Yes; but at the time of the first case there was no union claiming to represent the employees in the mail-order house or the retail stores. The union was simply claiming to represent the employees at the Schwinn warehouse.

Mr. ELSTON. Well, we got away from the main questions for a time. Let's go back to what transpired after the regional office had had its hearing in Chicago. When did the matter next come to your attention?

Mr. REILLY. The hearing began April 29 and ended on May 1.

Mr. ELSTON. When was the matter referred back to you by the Chicago office?

Mr. REILLY. Well, it was referred to them on March 6.

Mr. ELSTON. March 6?

Mr. REILLY. Yes, sir; and then these conferences with a view to getting an agreement on the bargaining unit took place, and proved to be fruitless, and the regional director then tried to get in touch with the parties with a view to fixing a date for the hearing.

I think he planned to hold this hearing in the latter part of March, but meanwhile the War Labor Board order, the second order, had been the subject of a hearing on March 29 and these union representatives had come down for that hearing, and they asked that the date of the election hearing be postponed until after that.

As a result of the hearing on March 29 the War Labor Board relieved the union of any duty of pressing for the election until the company had complied with a portion of the order extending the contract, so that after that order the union did not try to get a hearing until late in April.

Mr. ELSTON. So that if the War Labor Board had not relieved the union of its obligation to demand a hearing, the hearing would have proceeded and the election would have been held?

Mr. REILLY. That is right.

Mr. ELSTON. And the plant would never have been seized?

Mr. REILLY. I don't know just what would have happened, sir, but that may be so.

Mr. ELSTON. The only thing that the Government acted on when it returned the plant to its owners was the election?

Mr. REILLY. Yes.

Mr. ELSTON. So the War Labor Board prevented the election by that order?

Mr. REILLY. I presume the War Labor Board felt that it was entitled to have compliance with its order of January 15 since it had directed both parties to do something and one party had refused to comply with its order.

Mr. ELSTON. Was there any more compliance after the company had been seized at the point of a bayonet and had been turned back, than before it was seized?

Mr. REILLY. When the Government was in there, while it was in charge, it made no extended attempt to handle labor relations. I believe they did appoint a grievance officer, but it was in there such a short time that most of the grievances were not adjudicated.

Mr. ELSTON. Is there any more compliance today than there was before the seizure?

Mr. REILLY. No one has charged that the company is refusing to bargain.

Mr. ELSTON. The company has not extended its contract, has it?

Mr. REILLY. Not to my knowledge; no.

Mr. ELSTON. They are negotiating right now for a contract, aren't they?

Mr. REILLY. Yes.

Mr. ELSTON. So the situation is identically the same today as before the Government seized the property, except that an election has been held?

Mr. REILLY. There is no contention on anybody's part that the company is not complying either with the Wagner Act or the War Labor Board's order, because its duty to comply ceased as soon as the union was certified.

Mr. ELSTON. In other words, the election was the only thing in the whole case, wasn't it?

Mr. REILLY. Viewed from the standpoint of the correlative duties of all parties.

Mr. ELSTON. And that is what the company was asking for all the time, wasn't it?

Mr. REILLY. As I say, they never asked the Labor Relations Board to hold an election, although it is true that our regulations were such at that time that there was no provision for doing so but, as I say, we might have considered the need for an amendment in view of the acute situation.

Mr. ELSTON. Were you in consultation with the representatives of the War Labor Board during this controversy?

Mr. REILLY. Not just prior to the time the plant was taken over.

Mr. ELSTON. How long before the plant was taken over?

Mr. REILLY. I think Monday, April 17, which was about a week before.

Mr. ELSTON. The plant was taken over, wasn't it, on the 26th?

Mr. REILLY. Yes, sir. At that time they had made their recommendation and then this interdepartmental conference was held.

Mr. ELSTON. What do you mean by an "interdepartmental conference?" Who was present?

Mr. REILLY. The conference was held in Judge Vinson's office. He invited both Boards to attend the conference and all the members of our Board were there, Chairman Millis, my other colleague, Mr. Houston, and our general counsel, Mr. Rockwell; Chairman Davis and Mr. Garrison and their attorney, Mr. Freidin.

Mr. ELSTON. Anybody from the Department of Justice?

Mr. REILLY. No one from the Department of Justice was there.

Mr. ELSTON. What took place at that conference?

Mr. REILLY. It centered primarily about this point: The possibility that if the company were to comply with the order and people were to be discharged under it, the question was raised as to whether or not they would have any rights under the Labor Relations Act.

The question became academic shortly thereafter because the War Labor Board informed us that the union would not press for any enforcement of the maintenance-of-membership provision and, consequently, we advised Vinson and the Bureau of the Budget later that day that we didn't feel that the proposed Executive order would raise any conflict with the Labor Relations Act.

Mr. ELSTON. What else did you discuss at that conference?

Mr. REILLY. I think it was almost entirely centered about that. I think later, when we were leaving, Mr. Rockwell and I mentioned to their counsel the fact that the draft order required some further consideration. They said that the order had not gone to the Department of Justice at the time, and that the references to the statutes would be correctly set forth by the Department of Justice.

Mr. ELSTON. Was the question of election discussed at that meeting? I don't mean the election next November; I mean the election in the plant.

Mr. REILLY. I think we expressed a view that if the election had been held that there could not have been any legal question then as to the validity of the maintenance of membership provision.

Mr. ELSTON. In other words, if the election had been held you would not even be there, would you?

Mr. REILLY. No; the question would not have arisen.

Mr. ELSTON. The whole matter would have been over, wouldn't it?

Mr. REILLY. Yes.

Mr. ELSTON. And knowing that, and having discussed it at that meeting, did anybody urge your Board to change its regulation and order an election immediately so that this trouble could all be avoided?

Mr. REILLY. No, nobody urged our Board at that meeting to do this. Most of the discussion centered about the same question which Chairman Ramspeck mentioned, namely, the question of presumption of majority status arising from the prior certification, and I think we were all agreed that there was no legal authority squarely on the point, but there was some dicta on it.

Mr. ELSTON. Was there any discussion about the possibility that the Government might seize the plant?

Mr. REILLY. Oh, yes; because the conference was precipitated by the fact that the War Labor Board had sent to the White House a recommendation to do that, and this recommendation was accompanied by a draft of the proposed Executive order.

Mr. ELSTON. Was any discussion had as to how that seizure could be avoided?

Mr. REILLY. No. The question was more or less confined to that particular point, although I believe that it was indicated that the problem of seizure was a separate problem which would be discussed with the Department of Justice.

Mr. ELSTON. So that notwithstanding the fact that you had reached the acute stage where the Government was ready to take this thing over, the principal thing you discussed at the meeting was the contention of the company that if employees had resigned since December 8 when the contract expired, and the contract was renewed, those employees might be discharged. Is that right?

Mr. REILLY. That is right.

Mr. ELSTON. That was the principal topic of conversation, although you were on the verge of having Montgomery Ward & Co. seized by the President?

Mr. REILLY. The strike had already taken place at that time, and the members of the War Labor Board who were there for that reason felt that the matter was very urgent and that the only way of preventing this strike from spreading to other industries was for the Government to step in quickly and not wait for the election.

Mr. ELSTON. Well, there was one way right then, by which the whole thing could have been avoided, and that was for you to order an election. And nobody asked you to do it; did they?

Mr. REILLY. It could not have been done so rapidly as that. There was a dispute of the parties over not only the unit question, but over what persons should be eligible to vote, a hearing would have been necessary and then the mechanical work after the hearing was a tremendous problem. Even though the Board acted as rapidly as it eventually did act, in issuing a decision the very day after the hearing, we had to send extra clerks to Chicago from other regions to check those eligibility lists of 6,000 names, since there was a great dispute as to how many people came within this complicated formula agreed upon.

Mr. ELSTON. You acted pretty rapidly after the seizure took place?

Mr. REILLY. Yes; we did.

Mr. ELSTON. Why couldn't you act just as rapidly before the seizure took place?

Mr. REILLY. Well, as I say, I don't think we were dilatory at any stage of these proceedings, sir. It was not until late in March that it was clear to the regional director that he could not get a consent election and then further proceedings took place before the War Labor Board and the strike occurred almost immediately after their order of April 5.

So this day when we were having this conference in Judge Vinson's office, at best an election could not be held before 2 weeks and the strike was going on and spreading among teamsters and other transportation employees in Chicago.

Mr. ELSTON. The seizure could have been delayed until you had the election, couldn't it?

Mr. REILLY. I think the War Labor Board was of the opinion that the only way they had of getting the men back to work, because of the bitter feeling at that time, was to have the Government seize the plant and, under the Smith-Connally Act, a further strike would have been a criminal offense.

Mr. ELSTON. The men had already gone back to work when the seizure took place?

Mr. REILLY. I am not sure of that, sir. I don't think they went back to work until the President sent his telegram.

Mr. ELSTON. Then they went back, didn't they?

Mr. REILLY. Yes.

Mr. ELSTON. You are familiar with the terms of the War Labor Disputes Act, aren't you?

Mr. REILLY. Yes.

Mr. ELSTON. And you know in that act there are certain duties imposed upon the National Labor Relations Board?

Mr. REILLY. Yes.

Mr. ELSTON. Let me call your attention specifically to section 8. That section provides that—

In order that the President may be apprized of labor disputes which threaten seriously to interrupt the war production, and in order that employees may have an opportunity to express themselves, free from restraint or coercion, as to whether they will permit such interruptions in wartime—

(1) The representative of the employees of a war contractor shall give to the Secretary of Labor, the National War Labor Board, and the National Labor

Relations Board notice of any such labor dispute involving such contractor and employees, together with a statement of the issues giving rise thereto.

You had that notice, didn't you?

Mr. REILLY. There was no strike notice filed.

Mr. ELSTON. There may not have been a formal notice, but you did have notice of a labor dispute in Montgomery Ward & Co.?

Mr. REILLY. Not the kind of notice that section 8 requires.

Mr. ELSTON. You had notice that there was this trouble at Montgomery Ward & Co., didn't you?

Mr. REILLY. After February 14 we did.

Mr. ELSTON. You got that notice back in February. Let's see what else the act requires you to do.

Mr. REILLY. The kind of notice we received would have no bearing upon section 8. Section 8 deals with notices of a threatened interruption. There was nothing in the petition filed with us, or the position the union took, either with the War Labor Board in December or our Board in February or in March, that indicated that any strike was in the offing.

Section 8 speaks of notices where representatives of the employees wish to give notice of a threatened interruption of the production.

Mr. ELSTON. This is not confined to a strike. It says "a labor dispute." It does not have to be a strike or a threatened strike.

Let's see what the second part of the section provides. [Reading:]

(2) For not less than thirty days after any notice under paragraph (1) is given, the contractor and his employees shall continue production under all the conditions which prevailed when such dispute arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

(3) On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable on the question of whether they will permit any such interruption of war production.

Did you ever discuss taking that vote forthwith?

Mr. REILLY. Well, under that section it is the duty of the representative of the employees to file a notice, and then it is the duty of the contractor and workers to keep the status quo for 30 days.

If this company was a war contractor the failure to file that notice might have resulted in a suit for damages against the representative of the employees, so that the duty to poll the employees is contingent upon notice being filed.

Mr. ELSTON. One of the reasons why you didn't proceed under this section is because you didn't consider Montgomery Ward & Co. a war contractor?

Mr. REILLY. Well, it is true that we did have some doubt on that, but that isn't the reason we didn't proceed, sir. We have never conducted any strike ballots except when notice has been filed as the statute requires.

The CHAIRMAN. Mr. Reilly, if the contention of the Montgomery Ward Co. that they are not a war contractor or not engaged in the war effort is correct, section 8 would not apply at all?

Mr. REILLY. That is true, Mr. Chairman.

Mr. ELSTON. I grant that. That is the reason why you didn't give even any thought to this section, isn't it?

Mr. REILLY. No. This section has been in operation for about a year and we have conducted many strike ballots.

Now, when a notice is filed, we always consider then whether or not a company is a war contractor. If we receive a notice of a proposed strike we don't conduct a ballot if we think the plant is not a war contractor.

There not having been any notice filed, we never reached the question which you have raised, namely, whether Montgomery Ward was a contractor.

Mr. ELSTON. Let me ask you this question: Have you ever proceeded under this section in any case except where the company was definitely a war contractor and operated a mine, a plant, or war facility engaged in the production of war materials?

Mr. REILLY. You are quoting from section 3, I think. A war contractor is defined in section 1 and that question is always considered before proceeding with the ballot.

Mr. ELSTON. And the war contractor definition is as follows:

The person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith.

Mr. REILLY. Isn't there a further subsection which gives the President some authority in defining what a war contractor is?

Mr. ELSTON. Nothing here that gives the President the power to define. It gives the President the power to seize a plant, a mine, or a facility.

Mr. REILLY. I am referring back to section 1.

Mr. ELSTON. No. I read all of that section except these terms:

But such terms shall not include a carrier, as defined in title I of the Railway Labor Act, or a carrier by air subject to title II of such act.

That is the full section defining a war contractor.

To get back to my other question: You didn't at any time, did you, proceed under section 8 and require this strike ballot, except where the company was operating a plant, a mine, or a facility engaged in the production of war materials?

Mr. REILLY. We had taken some cases, I believe, involving chains of food stores, although I think in some cases some of their services were distributing food to certain military reservations.

Mr. ELSTON. They had a contract with the Government, then?

Mr. REILLY. Either a contract, or a subcontract with somebody else for supplying food to the Government.

Mr. ELSTON. Were they also manufacturing?

Mr. REILLY. No; in some cases they were just distributors.

Mr. ELSTON. You were operating under this section?

Mr. REILLY. Yes, sir.

Mr. ELSTON. What case was that?

Mr. REILLY. I have forgotten the name of it, sir. I am awfully sorry.

Mr. ELSTON. Why did you operate under this section if they were not considered a war contractor?

Mr. REILLY. Strike notice had been received and the question came up whether we would conduct a strike ballot, and we had to consider whether they were a war contractor as defined in section 1. Section 1 is more broadly worded than section 3.

Mr. ELSTON. Section 1 is the seizure clause and confines seizures to plants, mines, and facilities equipped for the manufacture, production,

or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith.

As a matter of fact, the language is almost the same as the definition of the war contractor.

Mr. REILLY. If you would like, sir, after I go back to my office and get out our docket of cases filed under the Smith-Connally Act, I could furnish to the committee the names of those cases and the kinds of businesses the companies were doing.

The CHAIRMAN. I don't think that has any bearing on this case.

Mr. ELSTON. I am not insisting on it.

(The witness submitted the names of some of the distributing chains which have been viewed as war contractors for the purpose of conducting a strike ballot under sec. 8 of the War Labor Disputes Act, as follows:)

Wholesale grocers: Letts Fletcher Co. et al., Marshalltown, Iowa; Witwer Grocery et al., Cedar Rapids, Iowa; C. C. Taft Co. et al., Des Moines, Iowa.
Great Atlantic & Pacific Tea Co., Portland, Maine.
Continental Baking Co., Toledo, Ohio.
Swift & Co., Armour & Co., Hunter & Co., Circle Packing Co., East St. Louis, Ill.

The CHAIRMAN. Mr. Clark?

Mr. CLARK. Do you have any information as to why the union waited until the last day to file this request for certification?

Mr. REILLY. No; I have not, sir. I presume that they were hoping the company would comply with the order of the War Labor Board which was issued on January 15.

There already was a hiatus in the contract when the order came down. The contract expired on the 8th and the order was served on the parties on the 15th.

Mr. CLARK. Does it sometimes happen under your procedure, that the bargaining unit may be determined short of an election or by means other than an election?

Mr. REILLY. Yes; it can be determined in a complaint case also. If a union has evidence of a majority—let's say it has applications for membership or authorization cards—and an employer refuses to bargain with it, it may, rather than go to an election, file a charge. If the Board then issues a complaint then one of the questions frequently in issue in that complaint case is whether the proposed bargaining unit is an appropriate one.

Mr. CLARK. Does the check-off system throw any light on whether the union is a bargaining unit or still has a majority?

Mr. REILLY. It may throw some light on whether the union had a majority if the check-off is compulsory. In this case the company stated before the War Labor Board that the number of persons whose dues were still being checked off was less than a majority. However, this particular contract did not make it compulsory for union members to have their dues checked off. They could have paid their dues directly to the union offices rather than being checked off.

Mr. CLARK. Getting around to the question of calling an election, you couldn't call an election under your procedure until a petition was filed by the union requesting one?

Mr. REILLY. Yes, sir.

Mr. CLARK. Now, in the War Labor Board's order of January 15 they required the union to file such a petition?

Mr. REILLY. Yes, sir.

Mr. CLARK. Now, but for that, could your Board have ordered an election?

Mr. REILLY. No; we could not have ordered an election until the union did file a petition, and even though the War Labor Board did make that order we were not able to order an election even then until the union subsequently did file its petition.

Mr. CLARK. What I mean is that until the Board ordered the union to file, you were helpless to proceed with the election?

Mr. REILLY. That is right.

Mr. CLARK. Now, did or did not the War Labor Board's order couple together the maintenance of the status quo and the filing of a petition for election?

Mr. REILLY. It coupled them together. It required the company to maintain the status quo.

Mr. CLARK. And the company declined to comply with the part of the order relating to it?

Mr. REILLY. Yes.

Mr. CLARK. And the union did file a petition but they filed it on the last of the 30 days?

Mr. REILLY. Yes.

Mr. CLARK. Now, something was said in Mr. Avery's reply to the President's request to comply with this order, to the effect that he could not do so without going contrary to the provisions of the National Labor Relations Act. Can you throw any light on what he meant by that or whether there would have been any conflict with the National Labor Relations Act?

Mr. REILLY. I presume he meant that if the company had extended the maintenance of membership agreement until the case was disposed of, despite the company's contention that it would have been violating the Wagner Act by so doing; what the President probably meant, I think, was that the question would not have come up because of the fact that the company would not have been required to discharge anyone. He didn't spell it out, but I presume that is what he meant.

Mr. CLARK. That is all.

Mr. CURTIS. Mr. Reilly, how long have you been a member of the National Labor Relations Board?

Mr. REILLY. I was appointed in October of 1941.

Mr. CURTIS. You have been a member continuously since then?

Mr. REILLY. Yes.

Mr. CURTIS. And you have been familiar with the situation of the labor contracts pertaining to Ward's of Chicago during most of that time, have you not?

Mr. REILLY. The Schwinn warehouse case that I described was decided before I came to the Board.

The first Montgomery case in Chicago in which I participated was the decision directing an election in the mail-order house and retail department store, which resulted in a certification in February 1942.

Mr. CURTIS. But you have been generally familiar with the situation, have you not?

Mr. REILLY. Oh, yes.

Mr. CURTIS. And throughout most of the negotiations between the union and the management of Ward's, they have published their contentions in the papers, have they not?

Mr. REILLY. I don't recall any publication in papers until late in 1942, at the time that Ward's declined to sign a maintenance of membership agreement pursuant to the first War Labor Board order.

Mr. CURTIS. Since 1942 that has been true?

Mr. REILLY. Yes.

Mr. CURTIS. And you have noticed those?

Mr. REILLY. Yes.

Mr. CURTIS. Now, I asked Mr. Davis yesterday how many bargaining units there were at Ward's in Chicago, and he replied he thought there were seven.

Mr. REILLY. Yes.

Mr. CURTIS. Will you enumerate them?

Mr. REILLY. Yes. There were the three that were the subject of certification, the Schwinn warehouse first, and then the mail-order house and the retail stores.

Then there were the four small units which were part of this over-all unit which directed the operations throughout the country. They were the photographic department, maintenance department, printing department, and display factory department.

Mr. CURTIS. What do you mean by "bargaining unit"? I will put the question differently. Were each of the bargaining units a separate local?

Mr. REILLY. No. They were all represented by the same bargaining agent, Local No. 20 of this C. I. O. union.

Mr. CURTIS. Why were they separated, then?

Mr. REILLY. Well, they were originally separated because of the fact that the union had claimed to be a bargaining representative at only one of them. That is the Schwinn warehouse. Later the union conducted a membership campaign in the retail stores and mail-order house.

Mr. CURTIS. The act under which you operate grants to your Board the authority to determine what is a bargaining unit?

Mr. REILLY. The appropriate bargaining unit; yes.

Mr. CURTIS. In 1940, even though it was before you were on the Board, at that time they held that Schwinn warehouse alone was a bargaining unit, did they not?

Mr. REILLY. Yes.

Mr. CURTIS. And an election was held and the union prevailed. Is that right?

Mr. REILLY. Yes.

Mr. CURTIS. And the management contended that more of Ward's Chicago establishments should be in that?

Mr. REILLY. Yes.

Mr. CURTIS. And if the management's contention had prevailed the results of the election might have been different. Is that true?

Mr. REILLY. Yes.

Mr. CURTIS. In 1942 were any elections held?

Mr. REILLY. Yes; the election in the retail store and the mail-order house.

Mr. CURTIS. And were they combined in one election?

Mr. REILLY. No. The parties themselves stipulated to separate units.

Mr. CURTIS. They were held as separate units?

Mr. REILLY. Yes.

Mr. CURTIS. Were there any elections in 1943?

Mr. REILLY. Not in Chicago.

Mr. CURTIS. And from the beginning up until 1944, in every election held at Ward's the separate establishments were considered a bargaining unit. Is that right?

Mr. REILLY. Yes. There has just been one election in each of the units.

Mr. CURTIS. But even by order of your Board and agreement of the parties, that has been the case, hasn't it?

Mr. REILLY. Yes.

Mr. CURTIS. Now, in the fall of 1943 when Ward's questioned the right of representation of the union, they didn't question it in all the units, did they?

Mr. REILLY. No; they questioned it in the mail-order house and the retail stores.

Mr. CURTIS. Now, in those units where they did not question it, they did not refuse to negotiate, did they?

Mr. REILLY. No; I don't think they did.

Mr. CURTIS. But they did raise the question in two units out of seven. Is that right?

Mr. REILLY. Yes.

Mr. CURTIS. Now, you say there is no provision—

Mr. REILLY. Could I amend my statement? I think there was also a question as to whether some of these units which dealt with the company's business on a Nation-wide scale should have been included, and I think the company took the position they should not be.

Mr. CURTIS. Now, in how many instances did Ward's management recognize the union by reason of their own records, whether that be a check-off or what?

Mr. REILLY. In the four administrative units.

Mr. CURTIS. Your answer is, in the four?

Mr. REILLY. Four.

Mr. CURTIS. In other words, their records showed that the union had a majority and they raised no question about it?

Mr. REILLY. That is right, yes.

Mr. CURTIS. There had been no precedent with respect to Ward's at Chicago for handling it in any way except separate units up until the time they raised their question in 1943?

Mr. REILLY. There was the War Labor Board precedent in 1932 which led to that exchange of letters between the President and Mr. Avery. The company at that time, when it was ordered to sign a contract which combined the mail-order house, the Schwinn warehouse, and the retail stores, did not raise any question of unit. Their whole objection centered upon the maintenance-of-membership provision.

The company contended it was illegal and against public policy. In other words, the parties themselves got together and combined the three major units into one bargaining unit in 1942, despite the fact that they could have legally kept them separate because the only certifications outstanding were for separate units.

Mr. CURTIS. Ward's desire for an election in these two groups that they questioned has never been recognized, has it, by your Board?

Mr. REILLY. We considered the contention in our decision of May 3 and explained why we did not feel that these two units should be set apart as separate units.

Mr. CURTIS. But it was common knowledge if you grouped them together the union would prevail, wasn't it?

Mr. REILLY. Oh, no, no. No one knew how the election would come out. There were many new employees and a large majority were girls just out of high school without any union background at all, and I understood from the people in the Chicago regional office that on the day of the election there was great uncertainty as to how the election would result.

Mr. CURTIS. And it was also common knowledge that if the two units in question had held their election separately there was a reasonable chance that the union would prevail. Isn't that true?

Mr. REILLY. I think that probably the union felt that if the Schwinn warehouse was in the unit it would help it, yes, but that was not the reason why we put it in.

The reason we put it in was because the company and the union themselves had combined them in the contract of 1942 which had expired.

Mr. CURTIS. The contract of 1942 was the one Ward's signed at the request of the President?

Mr. REILLY. Yes.

Mr. CURTIS. And that contract carried a provision that either party could terminate it?

Mr. REILLY. Yes.

Mr. CURTIS. Now, when Ward's served notice to terminate that contract in 30 days' time, that was in conformity with the agreement?

Mr. REILLY. In conformity to—

Mr. CURTIS (interposing). In conformity to the contract?

Mr. REILLY. Yes.

Mr. CURTIS. And not in violation of any rule or order made by anyone; is that right?

Mr. REILLY. Yes.

Mr. CURTIS. And at that time following their notice that they didn't want to extend the contract, did Ward's contend that they would negotiate with part of the units at that time? They expressed their willingness to go ahead and negotiate several of the bargaining units, did they not?

Mr. REILLY. As I understand, sir; yes.

Mr. CURTIS. Now, in reference to the petition that was filed pursuant to the order of the War Labor Board on January 15, 1944, there was no question but what the War Labor Board directed the union to seek an election; is that right?

Mr. REILLY. Yes.

Mr. CURTIS. In fact, at the time of that order of January 15, Mr. Davis published an opinion at the same time, did he not?

Mr. REILLY. Yes.

Mr. CURTIS. And in that published opinion, he specifically referred to a petition for an election; is that true? Do you have a printed form for the petition for election?

Mr. REILLY. Yes. A petition for investigation and certification of representatives.

Now, such a petition under section 9 (c) of the Labor Relations Act requires a hearing to be conducted.

Mr. CURTIS. You had a regular petition for it?

Mr. REILLY. Yes; but occasionally if the regional office does not happen to have any forms, the parties make out their own.

Mr. CURTIS. But you do have a regular orderly procedure for it?

Mr. REILLY. Yes.

Mr. CURTIS. Will you insert in your remarks at this point a copy of the petition that you usually use, the form?

Mr. REILLY. Yes. I will furnish that.

(The form referred to is as follows:)

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

PETITION BY EMPLOYER FOR CERTIFICATION OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that a question or controversy affecting commerce has arisen concerning the representation of employees in that two or more labor organizations have presented claims that each represents a majority of the employees of Petitioner in the unit set forth below. Pursuant, therefore, to Section 9 (c) of the National Labor Relations Act, Petitioner requests the National Labor Relations Board to investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

1. Name of petitioner.....
2. Address of establishment.....
3. Industry.....
4. The bargaining unit alleged appropriate by the competing labor organizations (describe below groups of employees or individual job classifications)
INCLUDES
EXCEPT FOR
5. The Unit contains approximately employees.
6. The following individuals or labor organizations claim to represent employees in the Unit:

| | | | |
|--|--|--|----------------------------|
| ..... |  | DO NOT WRITE IN THIS SPACE | |
| ..... |  | Case No. | Re |
| ..... |  | Docketed | |
| ..... |  | (Name and affiliation, if any) | |
| ..... |  | (Address) | (Contract expiration date) |
| ..... |  | (Name and affiliation, if any) | |
| ..... |  | (Address) | (Contract expiration date) |
| ..... |  | (Name and affiliation, if any) | |
| ..... |  | (Address) | (Contract expiration date) |
| Subscribed and sworn to before me this | | By | |
| day of, 19--, | | (Signature and title of petitioner's representative) | |
| at | | (Address) | |
| ..... |  | (Telephone number) | |

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

PETITION FOR CERTIFICATION OF REPRESENTATIVES

The undersigned Petitioner hereby alleges that the Employer named below has refused to recognize Petitioner as the exclusive bargaining agent of all the employees in the bargaining unit hereinafter described and that such refusal has given rise to a question concerning representation affecting commerce within the meaning of the National Labor Relations Act. Pursuant, therefore, to Section 9 (c) of said Act, Petitioner requests the National Labor Relations Board to

investigate such controversy and certify to the parties the name or names of the representatives designated or selected by the employees.

1. Name of employer
2. Address of establishment
3. Industry
4. Petitioner
5. The alleged appropriate bargaining unit (describe below groups of employees or individual job classifications) INCLUDES

DO NOT WRITE IN THIS SPACE
Case No. R
Docketed

- EXCEPT FOR
6. The Unit contains approximately employees, of which number have designated or selected petitioner as their bargaining representative.
 7. The following individuals or labor organizations claim to represent employees in the Unit:

| | |
|---|-------------------------------------|
| (Name and affiliation, if any) | (Contract expiration date) |
| (Address) | (Contract expiration date) |
| (Name and affiliation, if any) | (Contract expiration date) |
| (Address) | (Contract expiration date) |

Subscribed and sworn to before me By
this day of (Signature and title of petitioner's representative)
19.., at (Address)
..... (Telephone number)

Mr. CURTIS. And that form ultimately leads to the holding of an election or to a decision which can result in the holding of an election?

Mr. REILLY. Once in a while instead of holding an election, the Board requires the determination to be made by a card check. But since I have been on the Board, the policy has been to direct elections in almost every case.

Mr. CURTIS. Then, as a matter of fact, the union did not comply with the order issued by the War Labor Board of January 15, 1944?

Mr. REILLY. I would not say that, sir. While it is true the petition is not on our form, there is a regulation which requires a petition to contain certain information. It is true that our offices do also have these printed forms, but the regulation does not insist that the printed form be used.

Mr. CURTIS. But I want you to read into the record at this time the prayer of the petition filed by the union pursuant to the order of January 15, 1944.

Mr. REILLY. Yes. I don't have the printed form with me. I have the petition—

Mr. CURTIS. The one that was filed. At the close of the petition they probably asked for something.

Mr. REILLY. Yes, the whole thing, or just the prayer?

Mr. CURTIS. Just the prayer of the petition. Will you read that aloud, please?

Mr. REILLY (reading):

It is respectfully submitted that this petition of the United Mail Order, Warehouse, and Retail Employees Union, Local 20, Congress of Industrial Organizations, for recertification as the bargaining agent of the employees of Montgomery

Ward & Co., Inc., in its Schwinn warehouse, Chicago mail-order house, Chicago retail department store, maintenance department, administration building, photographic unit, display factory, and central printing department, is fully justified and ought to be granted.

Mr. CURTIS. In other words, they ask you to consider the facts that they set forth in their petition and recertify without an election; is that true?

Mr. REILLY. Yes.

Mr. CURTIS. Notwithstanding the following statement issued by Mr. Davis in his opinion:

This shall be done either by consent of the parties, or, failing agreement, by the union filing a petition for an election with the National Labor Relations Board, within 30 days after date of this order.

They did not file a petition and ask for an election, did they?

Mr. REILLY. No.

Mr. CURTIS. They filed a petition and asked for certification without an election?

Mr. REILLY. But under certain conditions that latitude is given.

Mr. CURTIS. But the Board had latitude to construe it for an election?

Mr. REILLY. Or it could have been construed as a petition to certify on the basis of a card check.

Mr. CURTIS. But the fact remains that there was a dispute as to their right, and it was serious enough for the War Labor Board to order them to seek an election, and they didn't do it.

Mr. REILLY. I assume that the War Labor Board did not mean to preclude a petition, in the more generic sense.

Mr. CURTIS. And it is true that the management at Ward's had been continuously and publicly seeking an election all through these months. Wasn't that true?

Mr. REILLY. Well, I don't recall exactly any advertisement to that effect. I know from the text of Chairman Davis' opinion that the Ward Co. had taken a position that it wanted to have an election, and some of the correspondence in this petition itself which is recited here indicates the company—

Mr. CURTIS. In other words, it has been common knowledge of the layman throughout the length and breadth of the land that Ward wanted an election?

Mr. REILLY. I don't know how common the knowledge was, but Ward's did want an election.

Mr. CURTIS. Could the union have sought an election right away in the fall of 1943 when the question was raised?

Mr. REILLY. When the notice of termination came?

Mr. CURTIS. Yes.

Mr. REILLY. Yes.

Mr. CURTIS. Aside from the terms of the National Labor Relations Act when somebody comes to you and states that they represent a third party, a concern of any kind, you have a right to ask them for their credentials, have you not, to make their proof that they are agents?

Mr. REILLY. Yes.

Mr. CURTIS. There is nothing in the National Labor Relations Act denying that right to an employer, is there?

Mr. REILLY. Not in the statute; no.

Mr. CURTIS. And you have rather broad authority to make rules, have you not?

Mr. REILLY. Procedural rules; yes, sir.

Mr. CURTIS. And it was within the scope of the National Labor Relations Board to make rules providing for the right of an employer to seek an election; isn't that right?

Mr. REILLY. Yes.

Mr. CURTIS. Now, what was the date that you ordered an election, either your Board or the regional office? When was the first date the election was ordered?

Mr. REILLY. The region does not have authority to do it under our regulations. We ordered the election on May 2 or 3—May 2.

Mr. CURTIS. May 2, 1944?

Mr. REILLY. 1944.

Mr. CURTIS. Now, what is the shortest length of time that an election could be held from the date a union filed a clear-cut petition asking for the election? When a union files a petition asking for an election and it is well known that the management wants an election, what is the shortest length of time that it would take, according to your rules, to hold an election?

Mr. REILLY. What happens in most cases—

Mr. CURTIS. I am not asking that. What is the shortest length of time in which it can be done?

Mr. REILLY. You mean assuming this case had priority over all cases?

Mr. CURTIS. Assuming it is an important case and the whole theory of the Government is that it is an important case.

Mr. Davis testified yesterday that the whole labor control program would break down if something didn't happen.

What is the shortest length of time you could have held the election after the petition was filed?

Mr. REILLY. With no dispute as to unit, and the parties willing to waive a hearing it could have been held within a week, perhaps, but in this case the parties at the conference, after the petition was filed in regard to the units were in dispute as to two things: First, the appropriate unit and, second, where to draw the line on the part-time employees.

Mr. CURTIS. Now, when did they file their petition for recertification?

Mr. REILLY. On the 14th of February.

Mr. CURTIS. If it had not been for those two questions, one as to what is the bargaining unit and the other as to the status of part-time employees, you could have held an election within a week?

Mr. REILLY. Yes. But the regional director, instead of arranging a conference for an election, referred the matter to the Board in Washington for advice.

Mr. CURTIS. As a matter of fact, it was a dilatory pleading, was it not?

Mr. REILLY. No. I think the union lawyer really thought there was some legal merit to his petition. It is true we denied it, but I think he really thought his position was fairly sound. It is rather elaborate and fairly well thought out.

Mr. CURTIS. This petition of February 13—is that the correct date?

Mr. REILLY. Received February 14.

Mr. CURTIS. Suppose you were going to have a hearing. How quickly could you have ordered a hearing?

Mr. REILLY. Usually if the conference with respect to the proposed unit is unsuccessful, and the parties insist on a hearing, we generally give the parties from 5 to 10 days' notice of hearing.

Mr. CURTIS. It could have been within 5 days?

Mr. REILLY. Yes. I might say, of course, that most of the unions and employers are represented by counsel, and if they have engagements in court, we grant continuances.

Mr. CURTIS. But from February 14, allowing a couple of days to get out your order, and 5 days' notice after that, you could have held a hearing on the 21st; is that right?

Mr. REILLY. We would not have given notice of a hearing unless it was clear that the parties were not willing to agree on the unit.

Mr. CURTIS. But if you had to give notice of a hearing, you could have issued your order for hearing and served notice and had it within a week, couldn't you?

Mr. REILLY. Yes, sir.

Mr. CURTIS. How soon after that could you have held the election?

Mr. REILLY. Under our rules, the parties are given, I think, 7 days after the hearing closes to file briefs.

Mr. CURTIS. After the oral argument?

Mr. REILLY. No; after the hearing itself which is before a trial examiner.

Mr. CURTIS. Is that a rule?

Mr. REILLY. That is a rule. It is in the regulations.

Mr. CURTIS. And it is a minimum of 7 days?

Mr. REILLY. Yes; and then after the briefs are received, the transcript is usually made up during that 7-day period. Then the transcript and the briefs are transmitted by the regional office to Washington.

Mr. CURTIS. If the petition was filed on the 14th, 7 days for notice of hearing would be the 21st, and 7 days for submission of briefs would be the 28th. How much longer would it take?

Mr. REILLY. In your calculation you assumed the hearing would be over in 1 day.

Mr. CURTIS. We will allow 2 days. That will be March 1. Then how much longer would it take?

Mr. REILLY. Then the transcript would be analyzed in Washington by one of the review staff and then his analysis and the briefs—the rules require three copies of the briefs to be filed—would be read by each of the members and then when they indicated that they were ready on the case, the case would be put on the Board agenda for discussion, and then if the members all agreed on the unit question and on the persons to be eligible, a vote would be held that afternoon.

Mr. CURTIS. That is all procedure within your own Board and not subject to any printed or prescribed rules?

Mr. REILLY. No.

Mr. CURTIS. And if Mr. Davis says this was a case upon which the whole labor structure rested, you could have done that in a day or two?

Mr. REILLY. I think we could have; yes.

Mr. CURTIS. That would take to March 3. Anyway, by March 10 you could have had the decision out and had an election by March 15, couldn't you?

Mr. REILLY. In order to hold that election within a week, we had, as I say, to transfer clerks from Washington and three other regions because of the fact that the pay roll was so complicated because of all the part-time employees.

Mr. CURTIS. How long did that take when you did proceed to hold an election?

Mr. REILLY. I don't think they had the pay roll ready until the day before.

Mr. CURTIS. How long did they work on it?

Mr. REILLY. Almost a whole week.

Mr. CURTIS. From March 1 to March 15 you could have held the election. Do you know for what purpose the Government seized Montgomery Ward in Chicago?

Mr. REILLY. The reason the Government seized the plant?

Mr. CURTIS. Yes.

Mr. REILLY. I presume to enforce the order of the War Labor Board.

Mr. CURTIS. You presume?

Mr. REILLY. I have no doubt that was the purpose of it; yes.

Mr. CURTIS. Did they enforce it? Didn't they turn the management back the night of the election?

Mr. REILLY. Well, by that time the order had ceased by its own terms to have any effect.

The election was held and the company was to be released anyway from any duty of complying with the order after the question of representation was disposed of.

It is true that the results of the election were not known but if the union had lost, of course the company would have been under no duty to bargain with it.

Mr. CURTIS. In other words, the controversy ceased when the election was held, and there was machinery available to have held an election by the middle of March had the orders of the War Labor Board been followed?

Mr. REILLY. I am not at all sure that it would have been possible to have gotten the parties to have agreed upon that stipulation with respect to part-time employees.

Mr. CURTIS. We allowed time for that and figured up to March 1 instead of a week, and allowed 15 days. That would have been March 15.

Mr. REILLY. The hearing would have lasted more than 3 days if the trial examiner had not been able to get the parties to stipulate as to the part-time employees.

Mr. CURTIS. I want to ask about something else, Mr. Reilly. I don't think it has anything to do with this case, but you referred to occasions when Ward's were guilty of unfair labor practices.

Mr. REILLY. Yes.

Mr. CURTIS. Now, the act under which you operate has remedies for unfair labor practices, has it not?

Mr. REILLY. Yes.

Mr. CURTIS. And those remedies are not suspended in wartime?

Mr. REILLY. No.

Mr. CURTIS. Is there anything in section 3 of the Smith-Connally Act giving the President authority to march an army in and seize a plant at the point of bayonets because of unfair labor practices?

Mr. REILLY. I don't think that is why he did it. He did it because there had been a dispute which interrupted production—

Mr. CURTIS. Production? How?

Mr. REILLY. In handling materials in this business. And it had already spread to the transportation industry in Chicago.

Mr. CURTIS. You are familiar with the act, are you not?

Mr. REILLY. With the Smith-Connally Act, yes.

Mr. CURTIS. And the power of the President to seize is limited to any plant, mine, or facility equipped for the manufacture, production, or mining of any articles which may be required for the war effort or may be useful in connection therewith.

Ward's was not any such plant in Chicago, was it?

Mr. REILLY. I am familiar with the legal position taken by the War Labor Board, and by the Attorney General, but I have not examined it independently and I would much prefer that you ask that question of the officials who have studied it.

Mr. CURTIS. They don't mine anything there, do they?

Mr. REILLY. No.

Mr. CURTIS. And they don't manufacture there in Chicago any implements of war?

Mr. REILLY. Not that I know of. I don't know if they have any war contracts or not.

Mr. CURTIS. You have had hearings where it was discussed about what kind of duties were performed at Ward's at Chicago?

Mr. REILLY. The only question before us has been whether their activities affect interstate commerce. We have taken evidence on that question, of course.

Mr. CURTIS. And in determining that you have heard evidence and heard arguments concerning the people at Ward's?

Mr. REILLY. I don't think that any—

Mr. CURTIS. You have been familiar with the type of business done?

Mr. REILLY. Yes.

Mr. CURTIS. Was anything ever said about manufacturing in Ward's establishment in Chicago—I mean manufacturing of implements of war?

Mr. REILLY. That is a question we wouldn't go into.

Mr. CURTIS. I am asking you if you ever observed any such discussion.

Mr. REILLY. No; I have not. But, as I say, our hearings did not go into the question of whether they have war contracts or not.

I might explain that the evidence of interstate commerce is usually proved by testimony showing that the records of the company show that it purchased a volume of goods from outside the State and that such-and-such a percentage of goods sold by the company entered into the stream of interstate commerce.

Mr. CURTIS. And coming back to section 3 of the Smith-Connally Act, there is nothing in there about retail houses, is there?

Mr. REILLY. No.

Mr. CURTIS. Did you recommend the seizure of Montgomery Ward's plant by the Government?

Mr. REILLY. Did we?

Mr. CURTIS. Yes.

Mr. REILLY. No.

Mr. CURTIS. Did you make any mention or suggestion of unfair labor practices when the seizure was discussed?

Mr. REILLY. No. Oh, I think we did say that we were aware that the company had been found at different times to have committed unfair labor practices, but since we were not taking any position—

Mr. CURTIS. When did you say that?

Mr. REILLY. In this conference that Mr. Elston and I were discussing.

Mr. CURTIS. Who first mentioned seizure in the interdepartmental conference?

Mr. REILLY. Oh, the recommendation of the War Labor Board had already been transmitted to the White House.

Mr. CURTIS. Now, when was this interdepartmental conference had?

Mr. REILLY. I think it was on Monday, April 17.

Mr. CURTIS. Was there anyone there opposing seizure?

Mr. REILLY. No one precisely opposed it. They simply raised the question of the possible impact of such an order upon the petition for election, and on the possibility of discharges.

Mr. CURTIS. Where was that conference held?

Mr. REILLY. In Judge Vinson's office.

Mr. CURTIS. Where is that in Washington?

Mr. REILLY. In the Federal Reserve Building.

Mr. CURTIS. Were any communications received from the outside at that conference?

Mr. REILLY. Any communications?

Mr. CURTIS. Any communications received.

Mr. REILLY. That day?

Mr. CURTIS. Yes.

Mr. REILLY. After this conference at which the War Labor Board said the question of discharges would not come up, we said we would like to have some assurance of that and, later, after communicating with the union involved, a letter was received saying there would not be any requests for discharges under the maintenance-of-membership provisions until the election had been held.

Mr. CURTIS. How long did this conference last?

Mr. REILLY. I think we met around half past 10 and broke up just before lunch.

Mr. CURTIS. And during the time of the meeting the union was contacting and conferring?

Mr. REILLY. Not during the meeting; no.

Mr. CURTIS. When were they to come back?

Mr. REILLY. In the afternoon.

Mr. CURTIS. And who spoke for the union?

Mr. REILLY. The president.

Mr. CURTIS. The president of what?

Mr. REILLY. Of the union.

Mr. CURTIS. The local in Chicago?

Mr. REILLY. No; the president of the national union, Mr. Wolchok.

Mr. CURTIS. How long after the meeting closed was it when you got his reply?

Mr. REILLY. My recollection is that it came in the mail the next morning.

Mr. CURTIS. Who was delegated to contact him?

Mr. REILLY. The general counsel of the War Labor Board, Mr. Freidin, and Mr. Garrison, said they would get in touch with the union if we wanted some assurance on that point.

Mr. CURTIS. Now, was there anyone there who said anything about the removal of postal employees from Ward at Chicago prior to the seizure?

Mr. REILLY. No one suggested that they be removed.

Mr. CURTIS. Was it mentioned?

Mr. REILLY. No.

Mr. CURTIS. Do you know when it was done?

Mr. REILLY. No. I never heard of it, in fact, until later when I read in the Congressional Record some comment on that.

Mr. CURTIS. Well, now, what part of the order of the War Labor Board of January 15, 1944, did the company refuse to obey?

Mr. REILLY. The part requiring it to extend the contract with the union. The company discontinued its grievance procedure, discontinued its check-off of union dues, which were the two major features of the contract.

Mr. CURTIS. They didn't reduce anybody's wages as they were agreed upon in the contract?

Mr. REILLY. No; I don't think any wage changes were made. Of course, under the Stabilization Act you can't raise or reduce wages without permission from the Board.

Mr. CURTIS. Everyone got the same pay that Ward's agreed to pay?

Mr. REILLY. As far as I know.

Mr. CURTIS. Did they fire anybody?

Mr. REILLY. Yes; there were some controversies about firing people just before the election. After our election order came out the Chicago region reported that the union said that it was very unfair to have an election held within that 7-day period since some of their men had been fired and had not been put back to work.

Mr. CURTIS. Did Ward's do anything to increase the hours of work of anybody over and above what the contract called for?

Mr. REILLY. Not that I know of.

Mr. CURTIS. They didn't make their work any more hazardous?

Mr. REILLY. Not that I know of.

Mr. CURTIS. In other words, Ward continued to carry out the contract so far as wages and hours and safety and everything so far as the individual workers are concerned?

Mr. REILLY. Yes. I don't recall any safety provisions in the contract, sir. I think the provisions were wage-and-hour provisions and for checking-off and for maintenance of union membership.

Mr. CURTIS. Were you in Chicago at the time of the seizure?

Mr. REILLY. No, sir.

Mr. CURTIS. And your Board had nothing to do with recommending the procedure?

Mr. REILLY. No.

Mr. CURTIS. I think that is all, Mr. Chairman. I may have just one more question. I would like to take time to look it up.

The CHAIRMAN. Mr. Reilly, as a matter of fact, the National Labor Relations Board had never had anything to-do with the seizure of any plant, did they?

Mr. REILLY. Oh, no; it is all outside our province.

The CHAIRMAN. They have no duty under the law or in connection with any Executive order in connection with any seizure?

Mr. REILLY. No.

The CHAIRMAN. You were asked about section 8 of the War Labor Disputes Act. That section of the act deals squarely with the question of giving notice for the purpose of holding a strike, does it not?

Mr. REILLY. Yes.

The CHAIRMAN. There never was any such notice in the *Montgomery Ward case*, was there?

Mr. REILLY. Oh, no; no such notice was ever filed.

The CHAIRMAN. The petition which was filed and which you later construed as authority for holding the election, was filed under the National Labor Relations Act?

Mr. REILLY. Yes.

The CHAIRMAN. And it has no relation to the National Labor Disputes Act?

Mr. REILLY. No.

The CHAIRMAN. Mr. Curtis asked a lot of questions about time consumed in reference to this matter. The time in which the election was held could have been shortened very materially if the Montgomery War Co. had agreed to decide the question on the basis of membership cards, could it not?

Mr. REILLY. Oh, yes.

The CHAIRMAN. That would have settled it in a few days?

Mr. REILLY. Yes.

The CHAIRMAN. And thousands of cases have been settled by your Board where the employer has agreed to that method?

Mr. REILLY. Yes; Mr. Chairman.

Mr. CHAIRMAN. Montgomery Ward never carried out the order of the War Labor Board at all in this case, did they?

Mr. REILLY. No.

The CHAIRMAN. And that brought about the strike?

Mr. REILLY. That was the immediate cause.

The CHAIRMAN. And the seizure was made to stop the labor dispute?

Mr. REILLY. Yes.

The CHAIRMAN. And the employees did comply with the order of the President and go back to work?

Mr. REILLY. Yes.

The CHAIRMAN. Montgomery Ward did not comply with the order of the President to extend the terms of the agreement. The order of the War Labor Board of January 15 required the union to seek an election contingent upon the status quo being maintained, didn't it?

Mr. REILLY. Yes.

The CHAIRMAN. And it was not maintained, was it?

Mr. REILLY. No; it was not.

The CHAIRMAN. Mr. Clark asked you something about Mr. Avery's claim that he was violating the National Labor Relations Act if he extended the terms of the contract. Is there anything in the National Labor Relations Act which can be so construed?

Mr. REILLY. Well, the only possible theory that—and I say it was purely academic because there was no request that anyone might be discharged—the only possible theory might be that if there was a discharge and the union did not in fact have a majority, that would

have been illegal but, of course, as we know, the union did have a majority and also there were no discharges made.

The CHAIRMAN. Assuming that the order of the War Labor Board—and that is my understanding of it—did not order Montgomery Ward to sign a new contract—

Mr. REILLY. That is right, it did not.

The CHAIRMAN. Then there could have been no violation of the National Labor Relations Act in simply maintaining the status quo?

Mr. REILLY. That is correct.

Mr. ELSTON. Will the gentleman yield there?

The CHAIRMAN. Certainly.

Mr. ELSTON. If that is correct, then what was the conference in Vinson's office?

Mr. REILLY. The question that was discussed was clarifying just what the duty of the company was. At that conference it was pointed out that the company was not required to sign any new contracts:

The CHAIRMAN. The contracts you referred to in the office of the Stabilization Director, Mr. Vinson, were after the War Labor Board had referred the situation to the President?

Mr. REILLY. Yes.

The CHAIRMAN. And the main reason for the conference, I assume, was to decide on the form of the Executive order to be issued by the President?

Mr. REILLY. That was one of the main questions. The order as originally drafted, you see, incorporated by reference the War Labor Board's previous orders and the question was whether the thing should be drafted so as to indicate just what the duties of the parties should be under the Executive order.

The CHAIRMAN. The main question was not to decide whether or not seizure was to be made, was it?

Mr. REILLY. It was not within the province of our Board to construe section 3 of the Smith-Connally Act, and we didn't take the position that we had any views to offer on that.

The CHAIRMAN. As a matter of fact, nobody has any authority to determine the question of seizure except the President of the United States, has he?

Mr. REILLY. No; with the advice of the Attorney General.

The CHAIRMAN. But the actual order has to be issued by the President of the United States?

Mr. REILLY. Yes, sir.

The CHAIRMAN. Mr. Elston had some discussion with you about section 2 of the War Labor Disputes Act. I think he used the term "section 1," but that is simply the title of the act.

Mr. REILLY. I think I am responsible for that.

The CHAIRMAN. Subsection 3, paragraph (b), contains what I think you had reference to. It does give the President some authority in construing the act, doesn't it?

Mr. REILLY. Yes, sir. That authority has been delegated by Executive order to the Secretary of Labor, and when we get strike notices filed in border-line cases we refer those cases to an interdepartmental committee, of which the Secretary of Labor is chairman and the Solicitor considers the legal questions involved and the determination is made.

The CHAIRMAN. Your Board, as I understand it, now has before it the question of changing its regulations so as to obviate the difficulty that arose in this case?

Mr. REILLY. Yes.

The CHAIRMAN. The proposal being that an employer, where the War Labor Board has jurisdiction, may seek an election if he questions the right of the union to represent the employees. That is now before your Board and has not yet been decided?

Mr. REILLY. That is correct.

The CHAIRMAN. However, you have had a hearing on the subject?

Mr. REILLY. Yes.

Mr. DEWEY. Would that provision for the holding of the election by the employer be a matter of ruling by your Board, or would that require congressional action?

Mr. REILLY. It would require an amendment to our regulations.

Mr. DEWEY. Without reference to the Congress?

Mr. REILLY. Yes, sir.

Mr. DEWEY. I would like to ask one question here on the term "status quo" that was to be maintained. What status quo? The status of what, and what was changed between the determination of the time of the election? Were there any changes in wages or conditions of work, or what? That has always confused me.

Mr. REILLY. I think that the War Labor Board meant the status quo as of the date that the dispute was certified to it. At that time this contract was still in effect and they ordered the employer to keep that in effect until this question of representation was disposed of.

The contract, as I say, provided not only for wages and hours, but also provided for grievance machinery and a voluntary check-off of union dues, and for maintenance of union membership.

Mr. DEWEY. As a matter of fact, were those changed, do you know?

Mr. REILLY. Yes; I understand when the contract expired the company ceased to recognize the union for the purpose of handling grievances for its employees in the unit and also ceased to deduct any union dues.

Mr. DEWEY. I would like to ask a final question. This dispute seems to center around a closed shop, a union shop, and maintenance of union agreement. Now, Mr. Davis spoke of the maintenance of union agreement at some length yesterday. I would like to get your views as to what those three types of contract mean.

First, what is a closed shop? What is a union shop, and the maintenance-of-union agreement? And afterward I would like to ask you one or two questions about the law, as that seems to be the nub of the question.

Mr. REILLY. A closed shop is an agreement which requires all new employees to be union members and requires all present employees to become union members, as of the date of the contract, if they are not already union members.

Mr. DEWEY. Who hires in the closed shop?

Has the management the right to hire, or does the union hire?

Does the union supply the workers?

Mr. REILLY. The union is source of a supply but the management is free to reject people that the union offers. But the management is bound to employ only union members.

The CHAIRMAN. May I interrupt there? It means members of that particular union?

Mr. REILLY. Of the contracting union. A union shop is used in two senses. Some writers refer to a union shop as meaning any company which has a contract with a union. Its more general meaning, however, is a contract which requires all new members to become union members and all persons who are already union members to retain their union membership.

The third kind of contract—

Mr. DEWEY. May I interrupt there? Is there any check-off in a union shop or closed shop, or do the members pay their own dues to the union?

Mr. REILLY. The check-off is an additional term of a contract. Until recent years about the only industry in which a check-off was found was the mining industry. There the miners did not have a closed shop, but the contracts always provided that the company should deduct the union dues of the miners who were union members.

The CHAIRMAN. Let's take that a step further. In both the closed shop and the union shop sometimes there appears a check-off and sometimes not?

Mr. REILLY. That is true.

Mr. DEWEY. May I ask another question? In the union shop I understand that new employees do not have to join the union during the trial period; is that correct?

Mr. REILLY. That would depend upon the way in which the contract was written.

If it was the most familiar type of closed-shop agreement it would require that they join immediately. There is a kind of an agreement found in the newspaper industry called a guild shop in which new members are given a month to join the union?

Mr. CURTIS. Would you yield to me for a question?

Does the National Labor Relations Act make it an unfair-labor practice for an employer to refuse to enter into a contract that has a closed shop or union shop or maintenance of membership clause?

Mr. REILLY. An employer under the National Labor Relations Act does not have to enter into any of these kinds of agreements. However, he is allowed to enter into a closed shop or a union shop agreement—

Mr. CURTIS. It is permissive, but to refuse to do so is not an unfair labor practice under your act?

Mr. REILLY. That is right, sir. A union-maintenance contract is the kind of contract more frequently required by the War Labor Board. Their general policy is not to require a closed-shop agreement unless the parties themselves have previously entered into a contract for a closed shop voluntarily.

These maintenance-of-membership agreements which usually are required, give the employees 15 days from the date of the order to withdraw from the union if they don't wish to remain. After that the union then furnishes a list of its members to the employer, and under the terms of the contract the union then has the right to ask for the discharge of any persons who fail to maintain their union membership from then on. Sometimes those agreements contain check-off provisions, and sometimes they do not.

The CHAIRMAN. What happens to new employees under the maintenance of membership?

Mr. REILLY. They are free to join or not to join.

Mr. DEWEY. Under these agreements that are drawn under the maintenance-of-union agreement, the 15-day escape clause, what are the terms offered to those that are not members of the union? Do they have the same wages and the same working conditions as the members of the union?

Mr. REILLY. Yes. The collective agreement covers all employees in the bargaining unit with respect to wages, hours, and other substantive terms irrespective of whether they are union members or not.

Mr. DEWEY. In the case of a strike what occurs?

If they are not members of the union, can they continue work if they want to? Only the members of the union are called out?

Mr. REILLY. I think the union usually asks all members of the bargaining unit to cease work. I assume in cases that nonunion members will not respond to the strike call. In other cases, some who are not members will respond to the strike call if they are sympathetic to the strike.

Mr. DEWEY. I don't quite follow what actually does happen. In your experience, which is vast, what does happen in a shop which has a maintenance-of-union agreement, in which there is some dissatisfaction on the part of the union and a strike is called? Then, what occurs?

Mr. REILLY. Usually, if the union still commands real support, virtually all the members leave and there is a complete paralysis of operations.

If the union has ceased to be popular, generally, after the first day or two of a strike, a good many employees will come back to work and go through the picket line.

Mr. DEWEY. But those that are members of the union, under the maintenance-of-union agreement, and those that are not, both are called upon to leave and it is left up to them, themselves, whether they quit work or not?

Mr. REILLY. Yes. Most union constitutions—although this is not universally true—provide for the local to take a vote of its members with respect to striking.

Other union constitutions provide that no strike may be called except with consent of the officers of the international.

Other constitutions don't contain any such provisions at all.

Mr. DEWEY. Do the nonunion employees of the company with a maintenance of union agreement also vote for a strike?

Mr. REILLY. Most constitutions don't give anyone a right to vote except the members. Of course, under the Smith-Connally Act, where a strike notice is filed, all employees are polled by us, but that is a development of only the last year.

Mr. DEWEY. The Smith-Connally Act is a temporary war act, whereas, as I understand it, the maintenance of union agreement existed prior to the passage of the Smith-Connally Act. We hope that the war will terminate one day and, 6 months thereafter, the Smith-Connally Act ceases to be law.

Mr. REILLY. Yes, sir.

Mr. DEWEY. Whereas, certain practices which have grown up under the Wagner Act will continue as permanent legislation.

What I am trying to find out is what will happen then, because it is your practices that are the old practices and not the Smith-Connally Act which has only been in existence a short time and may expire, I hope, in a short time.

Mr. REILLY. Yes.

Mr. DEWEY. I am trying to find out what is the fact and what does the maintenance of union agreement do in a plant, any more than check off the dues from those that join the union.

Mr. REILLY. It doesn't always do that. Its legal effect is simply to give the union a right to require the discharge of any man that fails to maintain his membership.

Mr. DEWEY. That is the salient point.

Is that 15-day escape clause now accepted by the National Labor Relations Board as good practice and liable to be continued?

Mr. REILLY. We could not continue it, sir, because under the terms of the Labor Relations Act we have no authority to require an employer to enter into any of these maintenance of membership or closed shop or union shop agreements.

The CHAIRMAN. The National Labor Relations Board has no authority to require any employer to even make a contract, has it?

Mr. REILLY. That is correct, sir, although the duty to bargain has been construed as meaning an effort to arrive at a contract.

But we have no authority to require them to enter into a contract.

The CHAIRMAN. But if the employer bargains in good faith and the employer and the union fail to agree, the National Labor Relations Board can't do anything about it, can they?

Mr. REILLY. No, sir.

Mr. DEWEY. Then, the only thing left is the return to the conciliation board—

• Mr. REILLY. Conciliation Service.

Mr. DEWEY. Conciliation Service, who tries to bring the contending union and the employer together, failing which there is nothing left but a case. And in case of the strike, after the Conciliation Service has acted, then what happens? Do you come in again, or is the Conciliation Service brought in, or what happens then?

Mr. REILLY. If there is a strike and if it is a strike for an economic objective which means something that an employer is not compelled by law to grant, we would only pass upon the strike, if at the time it was over the employer refused to take back the strikers even though he had vacancies.

If it is an economic strike the employer can fill the positions of all the strikers, and even if the men abandon their strike and ask for their positions back they are not entitled to them if the positions have been filled.

If the strike is caused by an unfair labor practice, e. g., a refusal to bargain with the union, then the strikers are entitled to get their positions back, and it is an unfair practice to refuse to put them back.

Mr. DEWEY. This has nothing to do with the case in point, but this has to do with the general weal of the whole country.

Does your board feel that it has any duty toward a consideration of the future and making any recommendations either for legislation or suggestions in regard to the employment of soldiers returning and their general situation in the whole labor field?

Mr. REILLY. There was some talk in Congress at the time the Selective Service Act was passed with regard to giving soldiers, whose employers refused to reinstate them, the same right under the National Labor Relations Act that an employee might have if discriminated against under the National Labor Relations Act.

That remedy was not included in the Selective Service Act. It might well be a very good subject for Congress to consider since the administrative methods are much more satisfactory than judicial methods.

Mr. ELSTON. Mr. Reilly, I won't keep you long. I just wanted to ask if in this meeting in Judge Vinson's office on the 16th of April, there was any discussion about invoking sanctions against the Montgomery Ward Co., as provided in Executive Order 9037?

Mr. REILLY. No discussion of that.

Mr. ELSTON. You are familiar with the Executive order to which I refer, which was made on August 16, 1943, which permits the Economic Stabilization Director to invoke sanctions against a company for violating an order of the National War Labor Board to this extent: It authorizes him to take appropriate action relating to withholding or withdrawing from a noncomplying employer, any priorities, benefits or privileges extended, or contracts entered into by executive action of the Government, until the National War Labor Board has reported that compliance has been effectuated. You say that was not even discussed there?

Mr. REILLY. I don't mean to imply by that that it may not have been discussed at other conferences, but that is the only one at which I was present.

The CHAIRMAN. Thank you, Mr. Reilly.

We will recess until 10 o'clock tomorrow morning, when the Attorney General will appear.

(Whereupon, at 1 p. m., a recess was taken until 10 a. m., Wednesday, May 24, 1944.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

WEDNESDAY, MAY 24, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to adjournment, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Ramspeck (chairman) presiding.

Present: Representatives Ramspeck (chairman), Clark, Byrne, Monroney, Dewey, Elston, and Curtis.

Also present: Representatives Doughton and May.

The CHAIRMAN. The committee will come to order, please.

We have this morning, as a witness before the committee, the Attorney General, Hon. Francis Biddle.

Mr. Biddle, we will be glad to have you make such statement as you wish to make, after which we will question you.

STATEMENT OF HON. FRANCIS BIDDLE, ATTORNEY GENERAL OF THE UNITED STATES

Mr. BIDDLE. Mr. Chairman and members of the committee, I welcome the opportunity to discuss the *Montgomery Ward case* before this committee. In this case, as in others, the legal questions are not abstract; they cannot be considered in a vacuum. Our country faces no more crucial domestic problem than that of wartime labor conditions. It is a problem that has challenged the imagination, the courage, and the patriotism of labor and industry alike; it is a problem that has been of the greatest concern both to Congress and to the administration. This is the context of the *Montgomery Ward case*; the legal issues must be considered in this setting. Hence, at the risk of crossing some of the same ground covered by Mr. Davis in his testimony, I shall refer briefly to the background material which bears upon the legal issues which it was my responsibility to consider.

I. BACKGROUND OF THE STATUTE

Before we declared war the National Mediation Board, a purely advisory body, had been created by Executive order to deal with labor disputes that threatened the defense program. As you know, on December 17, 1941, 10 days after the outbreak of the war, the President called a conference of representatives of labor and industry. That conference reached an agreement which provided, among other things (1) that there should be no strikes or lock-outs during the war;

(2) that all disputes should be settled by peaceful means—you will note that I emphasize "all disputes"—and (3) that the President should set up a war labor board to handle these disputes. Acting pursuant to this agreement, the President, on January 12, 1942, signed Executive Order 9017 which established the National War Labor Board. That order gave the Board jurisdiction to settle all labor disputes "which might interrupt work which contributes to the effective prosecution of the war."

Thereafter, Congress passed the War Labor Disputes Act, which became effective on June 25, 1943, and which in effect confirmed and approved the Executive order and gave the War Labor Board a full statutory basis. Section 7 of the act gave the Board jurisdiction to settle all labor disputes "which may lead to substantial interference with the war effort." The act provided machinery and methods for dealing with labor disputes and for preventing them from interrupting economic activities that were essential to our war economy. I need not remind you that the act was passed in the shadow of the coal strike. The President had taken possession of the mines. The strike was viewed as a strike against the Government, and it was the sense of Congress that the promotion of the strike should be forbidden by law.

The War Labor Disputes Act was only one of the statutes passed by Congress to maintain a healthy and orderly civilian economy as a basis for our war effort. Congress passed the Emergency Price Control Act of 1942 and the Stabilization Act of 1942. In section 1 of the Emergency Price Control Act of 1942 Congress recognized that the War Labor Board was an integral part of the machinery for maintaining an orderly war economy; that section specifically named the War Labor Board as one of the governmental agencies which was to use its authority to work toward a stabilization of prices and fair and equitable wages. The War Labor Board was therefore an essential part of the machinery Congress had provided to insure continuous production, to prevent inflation, and to establish our war economy. These statutes showed that Congress believed that this was not a war that involves only part of our people or only part of our economy, but on the contrary that this is a struggle that involves all of us and that we cannot win if we try to act as if the country were half at war and half at peace.

II. BACKGROUND OF THE "MONTGOMERY WARD CASE"

When the *Montgomery Ward case* was first submitted for my consideration, my attention was directed to the following circumstances:

Montgomery Ward & Co. had been involved in approximately 20 dispute cases before the National War Labor Board. These proceedings grew out of labor disputes between the company and its employees all over the country. The disputes involved both A. F. of L. and C. I. O. unions. In all of these proceedings the company had adopted a recalcitrant attitude; in most cases it had refused to abide by the directions and recommendations of the Board. In fact, Montgomery Ward & Co. had publicly taken the position that it was not bound by, and would not comply with, the no-strike and no-lock-out pledge that had been given by labor and industry to the President on December 17, 1941.

The labor dispute in Chicago had first been certified to the Board in 1942. In this proceeding the company had refused to comply with an order of the Board directing that certain terms and conditions, which the Board had found to be fair and equitable, should be included in a collective-bargaining agreement. At length the company did comply with the request of the President that it make the agreement, but it stated that it did so under duress.

This agreement had lasted for a year. But in December 1943, when the agreement terminated, the company had notified the union that it would not recognize the union or negotiate a renewal of the agreement. It took the position that the union no longer represented the employees. This dispute was certified to the War Labor Board by the Secretary of Labor and the United States Conciliation Service. After a hearing the Board entered an order that directed the company to maintain the status quo and to operate under the contract, which had been in existence for a year, until the National Labor Relations Board had settled the issue of representation. This order was conditioned on the union applying to the National Labor Relations Board, within 30 days, to have the issue of representation settled by an election. The company refused to maintain the status quo. It refused to extend the agreement even for the limited period necessary to settle the issue as to representation in an orderly and peaceful way. As a result a strike had taken place in the Chicago plant of Montgomery Ward which employed approximately 6,500 persons.

The War Labor Board believed that as a result of the Chicago strike, and the company's refusal to accept the orders of the Board, there was an immediate danger that strikes would break out in the other plants and facilities of the company located elsewhere in the United States. The fact is that on May 5, 1944, more than 500 employees of the company, working in its Hummer manufacturing division at Springfield, Ill., the division of Montgomery Ward which manufactures parts for military aircraft, went on strike because of the failure of the company to accept a directive order of the War Labor Board. It has become necessary for the Government to take over that plant pursuant to section 3 of the War Labor Disputes Act. Moreover, shortly after the strike in Chicago, 200 employees in the Montgomery Ward plant in Kansas City, Mo., went on strike because of the failure of the company to comply with an order of the War Labor Board. The War Labor Board also believed that there was an immediate danger that the dispute would spread to the plants and facilities of other companies and to other essential services. In fact, it was known that certain transportation unions in Chicago were already refusing to make deliveries to or to accept deliveries from the company's plants. That the Board's belief was well founded and that this aspect of the situation was dangerous is shown by the affidavits of Walter C. Christensen, chairman, Joint Lodge No. 119, Brotherhood of Railroad Trainmen; Maurice F. McElligott, secretary-treasurer, State Industrial Union Council of Illinois, and N. M. di Pietro, executive secretary, Chicago Printing Trades Union. I am submitting copies of these affidavits to the committee. Those affidavits, may it please the committee, are attached to my statement.

Montgomery Ward & Co. occupied an extremely important place in our economy. It was one of the two largest mail-order houses in the United States. In the fiscal year 1943 its gross sales amounted to

more than \$600,000,000. It was estimated that it served upward of 30,000,000 customers. It operated in every State of the Union. Approximately 75 percent of its mail-order customers were farmers who had to depend on mail-order houses for many essential articles. The company was an important distributor of farm equipment, machinery, and supplies. It was also an important distributor of building materials, work clothes, essential electrical supplies, heating apparatus and plumbing supplies.

The War Production Board had recognized the company's importance to the war effort by granting it priority and preference ratings which enabled it to get goods that would not otherwise have been available to it. Similarly, the Office of Defense Transportation had granted certificates of war necessity for trucks that were carrying the company's goods.

III. THE PRACTICAL PROBLEM IN THE "WARD CASE"

The practical problem had two important aspects. In the first place, there was the question of how the country's war economy would be affected if the national activities of this company should be interrupted or tied up by a Nation-wide labor dispute. Information furnished to me by other Government agencies, including the War Labor Board, the War Production Board, and the War Food Administration, indicated that the effect would be serious. The distribution of articles required by thousands of farmers and war workers, engaged in essential work, would have been disrupted. More specifically, I ask the committee to consider whether, in view of the present state of our food program, anyone should view with indifference any disruption whatsoever of the distribution of farm equipment. Conceivably, we might have provided other means of distribution for all of these commodities but the middle of a war is no time to begin rearranging our economic organization.

The second aspect of the situation was equally important. How would the attitude of the company and the existence of a Nation-wide labor dispute affect the whole structure of wartime labor relations and our stabilization program? If one employer could defy the orders of the War Labor Board and insist, during the war, on settling his labor disputes by economic warfare, then other employers could do likewise. If employers as a class were to be free to ignore the machinery for peaceful settlement—established by Congress—then the unions would be free to do the same thing. Certainly, any man who wishes to view this branch of the issue dispassionately must ask himself this question: Suppose in the *Ward case* it was the union rather than the company which defied the order of the War Labor Board and, resorting to its economic power, maintained a recalcitrant strike. Suppose the company rather than the union were the petitioner for relief and that the War Labor Board, in maintenance of its authority and in aid of the company and its customers had recommended in this case, as it has in others, that the President take possession of the plant. Assume that on that record the President had acted and that the criminal provisions of the act were now invoked against the union—that is, after possession was taken by the Government—would anyone question the President's authority to take the plant?

In short, the ultimate issue was whether all of our effort and energy was going to be devoted to fighting our enemies abroad or whether the country was to be distracted by an internal economic war waged by recalcitrant employers or recalcitrant unions as the case might be.

It was in these circumstances and in the light of these considerations that the War Labor Board recommended to the President that he take possession of the plants and facilities of Montgomery Ward in Chicago and operate them until a peaceful and orderly election could be held to determine whether the union if fact represented the employees. It was then that I was asked by the President for my opinion as to whether this action was authorized by law. I concluded that it was.

IV. PRESIDENT'S AUTHORITY UNDER THE WAR LABOR DISPUTES ACT

I believed that the War Labor Disputes Act authorized the action. Section 3 of that act provides in part as follows:

SEC. 3. Section 9 of the Selective Training and Service Act of 1940 is hereby amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession—

I emphasize the words "immediate possession," as I shall have occasion to refer to them later—

"of any plant upon failure to comply with any such provisions, and the authority granted by this section for the use and operation by the United States or in its interests of any plant of which possession is so taken, shall also apply hereinafter provided to any plant, mine, or facility—

now, these are the important words—

"equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: * * *"

Under that section, three requirements must be satisfied before the President may take possession of property: (1) The property must be a plant, mine, or facility; (2) it must be equipped for manufacture, production, or mining; and (3) it must be so equipped with respect to articles or materials which may be required for the war effort or which may be useful in connection herewith.

As to points (1) and (3) there seemed to be no room for argument. Certainly the properties of Montgomery Ward in Chicago were plants or facilities, and in fact the company has never argued otherwise. Certainly, these plants and facilities dealt in articles or materials which might be required for the war effort or which might be useful in connection therewith. Farm machinery and supplies, electrical supplies and essential goods of that description are clearly useful in connection with the war effort. That is why the War Production Board gives priorities for their manufacture and distribution. In fact, that is why the War Production Board had actually given Montgomery Ward & Co. priorities and preference ratings for goods of this kind.

That left for consideration the question whether the plants or facilities were equipped for manufacture, production, or mining within the meaning of the statute. There was no issue as to the words "manufacture" or "mining," so that the application of the statute turned on the meaning to be given the one word "production." I would like to call the attention of the committee to the fact that both the words "production" and "manufacture" were used, so obviously if both words were used, "production" does not mean the same as "manufacture." The question was whether the word "production" should be given a narrow and technical meaning, and read as if it were synonymous with "manufacture," or whether it should be read as covering other essential economic activities such as storage, repair, maintenance, supply, and distribution—all involved in the production process.

The *Montgomery Ward* case was not the first time that I had faced this question. In February of 1944 the operations of the Department of Water and Power of the City of Los Angeles had been interrupted by a labor dispute caused by the refusal of a union to settle its grievances peacefully. The interruption was threatening to interfere with essential civilian services and with the operation of war plants in the Los Angeles area. The War Labor Board and the War Department requested the President to take possession of the properties, under section 3 of the act, and to operate them in the interests of the war effort. My views were asked as to the legality of this step. The properties involved were essentially distributing and not manufacturing facilities. It is true that a small amount of power was generated in two steam plants but more than 80 percent of the power was purchased by the city from Boulder Dam. Furthermore, the water system, which was separate from the electrical facilities, was almost entirely a distribution system. I concluded that in a case of this kind the word "production" should not be given a narrow or technical meaning and that the Los Angeles properties could lawfully be taken under the statute.

For the information of the committee and for future reference, I have here a summary, although it is not mimeographed, of all of the seizures taken both before and after the passage of the act, and I can refer to those if there is any special one the committee would be interested in.

Any other construction of the statute would have led to serious consequences. There are a number of statutes that authorize the President in time of war to take over specific kinds of property. For example, the act of August 29, 1916, (10 U. S. C. 136) authorizes him to take possession of and to operate transportation systems in time of war; the Communications Act of 1934 (47 U. S. C. 606 (c) and (d)) authorizes him to take over radio facilities and wire communication systems; the Federal Power Act (16 U. S. C. 809) authorizes him to take possession of power projects that are operated under a Federal license. But the only statute of general application is section 9 of the Selective Training and Service Act as amended by section 3 of the War Labor Disputes Act, the section we are now interested in. If the word "production" in section 3 is given a narrow and technical meaning, a number of essential economic operations and services—not covered by specific acts—fall outside the scope of that general statute. Electrical and water distribution systems such as those involved in the *Los Angeles* case are one example. Other examples

are harbor and port facilities and central storage and warehousing facilities. I did not believe when I approved the Los Angeles order or the Montgomery Ward order, and I do not believe now, that Congress intended to exclude these essential operations from the scope of section 3 of the War Labor Disputes Act merely because they do not fall within a narrow and technical definition of the term "production."

I believe that the word "production" as used in section 3 includes all essential steps in the preparation, manufacture, assembly, maintenance, storage, repair, transportation, and distribution of articles or materials which are required for the war effort or which may be useful in connection therewith. The machinery provided for settling war-time labor disputes has never drawn a distinction between disputes in manufacture or production, on the one hand, and disputes in other essential economic operations on the other. I think Chairman Davis testified at some length on that point day before yesterday before the committee. This distinction was not drawn in the Executive order that established the National Mediation Board or in Executive Order No. 9017 which established the National War Labor Board. When you consider the War Labor Disputes Act as a whole, you see that this act does not draw this distinction; on the contrary the act provides methods and machinery for dealing with all labor disputes that threaten to interfere with the prosecution of the war. Section 7 of the act which defines the Board's jurisdiction, says that the Board shall deal with all disputes that threaten to lead to substantial interference with the war effort. It did not seem to me reasonable to assume that Congress intended the area within which the President may act as defined in section 3 to be smaller than the area within which the Board must act under section 7. The assumption is inconsistent with the statute's purpose. It is unreasonable because it requires us to conclude that in important instances the power of the Government to deal with labor disputes diminishes at the precise point when labor disputes become most dangerous to the war effort, that is, when means of peaceful settlement have failed.

Let me emphasize again the example which seems to be most striking, that is, the loading of vessels in New York or California. Let us assume the stevedores go on strike in San Francisco or in New York. Now it seems to me to be a very narrow and impractical construction to say under that statute the President has no right to stop a strike which is preventing the loading of goods and vessels going to the front, and yet the construction urged by Montgomery Ward would mean that that construction would have to be taken by the President under the statute.

Examination of the other sections of the act shows that in section 8 Congress used the word "production" in the broad sense which I contend it has in section 3. The definitions of "war contract" and of "war contractor" contained in section 2 of the act—and I am now referring to section 2 of the act under "Definition"—are so framed that a person may be a war contractor or may have a war contract even though he does not manufacture or produce, in a technical sense, but simply supplies goods to the Government or is engaged in some other essential activity such as maintenance, storage, repair, or installation. These are all words used in that definition section. These definitions are read into section 8 and control the application

of that section. The section imposes certain obligations on employees of a war contractor and these obligations are stated in terms of their relationship to "production." For example, the section—I am speaking of section 8 now—provides that after notice of a labor dispute is given to the Government, the employees shall continue production under existing conditions until the dispute has been dealt with by the National War Labor Board.

Thus, the word "production" is used here—that is, in section 8—to describe the activities of a contractor who does no manufacturing but who simply supplies goods to the Government or who is engaged in storage and maintenance or repair activities. In its briefs filed in the district court, Montgomery Ward did not seriously contend that this interpretation of the word "production" in section 8 was wrong. It argued, in effect, that the word "production" meant one thing in section 8 and quite a different thing in section 3. If the word "production" has one meaning in section 8, it should be given the same meaning in section 3, particularly because that is the only meaning that will make section 3 consistent with the plan and purpose of the statute. It is improbable that Congress, in the first stages of handling labor disputes—the cooling-off period, the 30-day notice, the certification to the Board that the dispute could not be settled, the taking of jurisdiction by the Board, the determination by the Board should have meant to cover all forms of industrial strike, which those sections clearly did; and in the final enforcement step should have meant enforcement and settlement of only some labor disputes and not of other labor disputes which were equally serious.

I shall now discuss the President's authority as Commander in Chief aside from the act.

V. PRESIDENT'S AUTHORITY AS COMMANDER IN CHIEF

Although I relied, in the first instance, upon the provisions of the War Labor Disputes Act, I also believed that without regard to the statute the President had the authority to take over the plants and facilities of Montgomery Ward and to operate them in the interests of the war effort. At the outset I should like to say a word about the nature of this authority. It is an authority, in time of war or emergency, to take possession of property, paying its owner fair compensation and to use the property for public purposes. In other words, the power at issue is essentially the power of requisition. The exercise of this power is limited by the fifth amendment, which provides that property cannot be taken except for a public use and for fair compensation.

I think that it will assist the committee if I consider the legal questions that arise in this branch of the case under two headings: (1) Does any power of this kind exist in the President in the absence of statute, and (2) if the power does exist, was this Montgomery Ward case a proper case for its exercise? First, is there a power? Secondly, was it properly exercised?

So far as concerns the first question, it seemed clear to me that such a power exists. It has been specifically recognized by the Supreme Court in two decisions: *Mitchell v. Harmony* (13 How. 115), and *United States v. Russell* (13 Wall. 623), the latter case being a Civil War case. It has also been recognized in a line of decisions by the

lower Federal courts. *Roxford Knitting Co. v. Moore & Tierney*, (265 Fed. 177 (C. C. A. 2d, 1920)); *Dashiell v. Grosvenor* (66 Fed. 334 (C. C. A. 4th, 1895)); *United States v. McFarland*, (15 Fed. (2d) 823 (C. C. A. 4th, 1926)); *Alpirn v. Huffman* (49 F. Supp. 337 (Dist. Ct. of Nebr., 1943)); *In re Inland Waterways Inc.* (49 F. Supp. 675 (Dist. Ct. of Minn., 1943)); and see *Baltimore Transit Co. v. Flynn, et al.* (50 F. Supp. 382 (Dist. Ct. of Md., 1943)).

Since I gave my opinion to the President, the United States District Court for the Western District of Kentucky, in *Ken-Rad Tube and Lamp Corporation v. Badeau*, has also expressly recognized the existence of this power. This case is significant because it involved the seizure of a plant under the provisions of section 3 of the War Labor Disputes Act. The court held that the seizure was authorized by the section and then stated:

I further conclude that without an act of the Congress there was sufficient authority by the terms of the Constitution itself to justify the action of the President in this case.

The copy of the opinion, I think, has been handed up and is attached to my statement which is now before the committee, in the case I am talking about.

In this connection the court quoted with approval a statement from my opinion in the *Montgomery Ward case*. Because the opinion in the *Ken-Rad case* is as yet unreported, I am furnishing the committee with mimeographed copies.

The cases that I have cited are discussed in some detail in the briefs we filed in the district court in Chicago. I do not propose to burden the committee with that discussion. Copies of my brief have already been furnished to the members of the committee for their review. I filed two briefs in that case, and the other side's briefs were also handed up, all four briefs. I point out that although in a number of these cases the courts were construing and enforcing statutes, the courts expressly recognized the power of the Executive in time of war or emergency to requisition private property for public use even in the absence of a statute. One of the clearest statements is contained in the *Roxford Knitting Company case* in which the Circuit Court of Appeals of the Second Circuit said:

In time of war or impending public danger, and without statutory authorization, private property may be appropriated for the public use.

President Lincoln, without express statutory authority, took possession of a railroad during the Civil War, and subsequently Congress, in substance, approved his act in providing by statute he could take the railroad, just as in this case the President took possession in several instances of plants without specific statutory authority, particularly the mines, immediately before this statute was passed, and Congress recognized that by passing the statute. Before the passage of the War Labor Disputes Act and when there was no express statutory authority for doing so, the President—that is, President Roosevelt—in nine cases, took over industrial facilities whose operations were interrupted or threatened with interruption. In the first two of these cases, the North American Aviation plant at Los Angeles and the Federal Shipbuilding & Dry Dock Co., the President acted before the country was at war, but during the national emergency which he had proclaimed. These cases are all summarized here. The very first

case, by the way, the *North American Aviation case*, the members of the committee will remember was a case in which a strike broke out at the time when negotiations were pending before the mediation board. That plant was taken over on account of the breach of the contract by labor, the first case that was started. At the time of the taking of the North American Aviation plant at Los Angeles, my predecessor, Robert H. Jackson, issued a statement explaining the legal basis for the President's action. In that statement Mr. Jackson took the position that the President's action was authorized under the Constitution and the laws of the United States, despite the absence of a specific statute.

It is significant that in the debates and congressional discussions which preceded the passage of the War Labor Disputes Act, it was generally conceded that the President has this authority and that it had been lawfully exercised in the cases I have mentioned. This is clear, as the committee will remember, in the case of the proceedings in this House. The Connally bill, S. 796, passed the Senate on May 5, 1943, and on the same day was referred to the House Committee on Military Affairs. That committee reported, on May 11, a much modified bill (H. Rept. 440, 78th Cong., 1st sess.) which not only added to the Senate bill most of the provisions incorporated in the bill previously introduced by Congressman Smith (H. R. 2124), but also eliminated from the Senate bill the plant-seizure amendment to section 9 of the Selective Training and Service Act, which later was incorporated in section 3. As reported by the House committee, the bill did not address itself at all to the authority of the President to take over a plant though it retained the criminal provisions of the Connally bill applicable "whenever any plant, mine, or other property is in the possession of the United States." This, I think, is an important consideration. In short, the House bill assumed the existence, in the absence of statute, of the President's power to take over strike-bound plants by providing criminal sanctions to protect the Government's operation whenever the power should be exercised. It had been put in a section authorizing the President to take, but with knowledge of the history that the President on other occasions had taken such plants they put in a criminal provision with respect to plants after possession had been taken by the Government. The chairman will recall that it was his view that the legislation should in substance be limited to these criminal provisions alone (Cong. Rec., June 3, 1943, p. 5414).

Throughout the House debate there was no suggestion that the President did not have the power to take over the mines without statutory authority; there was no challenge to the assumption embodied in the bill that actually passed the House that such authority existed, that it had been appropriately exercised in the past and especially in the case of the mines. The statements that were made in the hearings and debates showed that Congress recognized the existence in the President of a power apart from statute.

Having determined that the power existed—and I personally think there can be no question about the existence of the power—the next question was whether the *Ward case* was a proper one for its exercise. I gave this question careful consideration because I knew that the power was not unlimited in its scope, and that the legality of its exercise in a particular case would always be reviewed by the courts.

I should like to emphasize at this point that I have never contended that the exercise of the power is immune from review by the courts. The power is limited because the property must be taken for a public use, fair compensation must be paid, and the power in the absence of statute can be exercised only in an emergency. To use the words of Chief Justice Taney, which I quoted in my oral argument before the court in Chicago, in *Mitchell v. Harmony*, supra, there must be—

an immediate and impending danger or an urgent necessity for the public service.

Did the emergency that faced the President justify the exercise of the power? I concluded that it did. In the first place, as I have said, I was told by those who were familiar with the situation that there was a real danger that this dispute might interrupt the Nation-wide activities of Montgomery Ward & Co., Inc. This was not a situation that could be dismissed lightly. Montgomery Ward was not a single retail store or a corner grocery. It was a Nation-wide integrated enterprise employing approximately 78,000 persons and serving 30,000,000 people. Many of its customers relied primarily upon mail-order houses for essential articles such as farm machinery and equipment, work clothing, electrical equipment, tools, and supplies of various kinds. Unless the civilian economy is to be dismissed as unimportant, or unless we are to assume that only part of the country and not all of it is at war, this was an emergency situation. Would anyone have doubted it to be such had the situation been one in which the union was recalcitrant and the company's operations were suffering by reason of an unjustified strike?

But apart from the importance of Montgomery Ward as a part of the distribution system of the country, the situation had even more serious aspects. It was the view of the War Labor Board that the policies of Montgomery Ward & Co., Inc.—the recurring and numerous labor disputes in which it was engaged; its persistent refusals to comply with the orders of the Board; its insistence that it was entitled to carry on its own economic war within the country while the country was fighting its external enemies abroad—threatened the entire structure of our wartime labor relations. This was the considered and unanimous judgment of the Board which Congress itself had created to deal with wartime labor problems. It was a judgment entitled to the most careful consideration and to the greatest weight.

It may be suggested that the President should have waited until strikes had spread to other industries, had affected production and distribution generally throughout the country, and had broken down the settlement machinery of the War Labor Board. If the President had followed these counsels of timidity, he might have avoided criticism but he would have risked disaster. In my opinion, to have taken that course would have been to show irresponsible hesitation at a time when our country's military effort, both in Europe and the Pacific, was approaching a climax and when we were required to devote all of our domestic efforts to the support of our armies. The constitutional power of the Executive is a power to prevent crises; it is not limited by a duty to encourage them. I reject the suggestion that when a crisis impends the constitutional power of the Executive must be held in abeyance until the crisis occurs and our country's security is threatened with the very peril that it is the duty of the Executive to prevent.

VI. THE EVENTS IN CHICAGO

Now I wish to discuss what happened in Chicago. As you know, the Executive order was signed on April 25. I think it was apparent to everyone 2 days previously that if the status quo could not be preserved so as to make possible an orderly and fair election, the President proposed to take possession of the plant, as he had done in other instances where the War Labor Board orders were not obeyed. The company was certainly aware of this possibility because in the telegram it sent to the President on April 24, 1944, it denied that the President had the power to take this action. On April 26, 1944, when Mr. Taylor served upon Mr. Avery a certified copy of the Executive order, Mr. Avery refused to recognize the order or to admit that Mr. Taylor had taken possession of the plant. At that time he said that only force would make him recognize Mr. Taylor's possession. When eight U. S. marshals were summoned by Mr. Taylor, Mr. Avery took the position that the eight marshals were not a sufficient force to require him to admit that the Government had possession in fact, whatever the legal situation might be.

In the 25 other seizures—in practically all of which the Army or Navy had either seized the plant or aided in its seizure—no resistance to the taking of possession by the United States had ever been encountered. We assumed that Mr. Avery would regard the presence of soldiers as sufficient force for whatever legal right he wished to establish. Five separated buildings had been taken over. It was necessary to have a sufficient force to establish possession of all of them.

It became apparent that Mr. Avery proposed not only to deny the Government's possession, in fact, but also to interfere with its operation of the plant. Mr. Avery persisted in refusing to give Mr. Taylor access to books and records which were essential if Mr. Taylor was to operate the plant. Mr. Avery instructed his employees to disobey Mr. Taylor's request and to refuse to recognize his presence in the plant. Mr. Taylor exhausted every recourse in his attempts to conciliate Mr. Avery and to obtain his cooperation. Mr. Jones offered to permit Mr. Avery to operate the business for the Government. Mr. Avery had refused. At this point, no attempt had been made to bar Mr. Avery from the premises. It was hoped that he would cooperate to handle the situation in an orderly way—as he could have done without conceding in any way the legality of the President's action or jeopardizing in the slightest the company's legal position. Mr. Avery's presence on the premises was unobjectionable as long as he did not attempt to interfere with Mr. Taylor's operations of the plant or his effort to discharge his duties under the Executive order.

Finally, it became clear, however, that Mr. Avery was determined not to handle the situation in an orderly way and that his mere presence on the premises would interfere substantially with Mr. Taylor's discharge of his duties. Mr. Avery was then twice requested to leave. When he refused to do so, and insisted that he would stay in the plant unless he were physically removed there was no recourse but to order his removal.

By 4 o'clock on the same day, April 27, 1944, Mr. Avery having made no move to go into court to test the legality of our action, we filed a bill in equity in the United States District Court for the Northern District of Illinois asking that court to enjoin Mr. Avery

and the other officers of the company from interfering with our possession and operation of the plant. By an automatic process that is in use in that district, Judge Holly was assigned to hear the cause. We believed that, for obvious reasons, a temporary restraining order was necessary. We could not, however, find Judge Holly until the evening of April 27. At that time, the judge signed a temporary restraining order which enjoined Mr. Avery and the other officers of the company from interfering with our possession and operation of the plant.

The question had been raised why we did not bring suit against the company to get possession of the plant. Section 3 of the War Labor Disputes Act says that the President shall take "immediate possession" of a plant pursuant to its provisions. In all of the cases both before and after the passage of the act, it has been the practice of the Government to take immediate possession, as the act provides.

In the two cases in which owners have contested the legality of the action, they did so without forcibly resisting the taking of possession and without insisting, as Mr. Avery did, that the Government demonstrate its power by a display of actual force. It is clear that the purposes of the act could not be achieved if it were necessary to litigate first and to take possession afterward. In all of the cases arising under section 3 it is necessary for the Government to act promptly to prevent interruptions of production. For example, if we had chosen to litigate before the President took possession of the coal mines in May 1943, the litigation might still be going on and the coal mines either closed or their operations substantially impaired.

I might also add that I am exceedingly doubtful as to whether any court of equity, without a showing of interference by the defendants, would have granted relief. The Government comes in and says to the court: "Under the statute we have a right to take possession, and yet we, the United States Government, are not able to do so with the Army and marshals combined." I think most courts would say: "Well, gentlemen, if you have the right why don't you go in? Why do you ask the court to go in?"

Montgomery Ward was in no different position from the owners of the other plants and facilities that have been taken under the act. It was our duty to treat the company exactly as the statute required and as other owners had been treated in other cases.

The Government's purpose in taking possession of the plant was accomplished when the election was held. The order of the National War Labor Board had simply directed the company to preserve the status quo until the National Labor Relations Board could determine whether the union, in fact, represented the employees. This was all that the President had asked in the telegram which he sent to the company on April 23, 1944. It was because the company had refused to preserve the status quo that the strike had occurred which interrupted the operations of the plant. Once the question of representation had been decided, the only appropriate course for the Government to follow was to withdraw from the plant.

It was unfortunate that one of the consequences of this action was to make the court case moot and thus prevent a decision on the legal question involved. But the district court concluded, and I think quite properly, that under the decisions of the Supreme Court there was no escape from this result. Of course, the same thing would

have been true. It made no difference what time we went out of possession.

VII. THE GOVERNMENT'S ARGUMENTS

One other matter requires comment. It has been asserted that in the district court in Chicago I argued that the power of the President to take property is unlimited in scope, that any and all property can be seized regardless of its relationship to the war, and that the exercise of this power cannot be reviewed by the courts. I did not make any of these arguments.

A summary statement of our position is found on page 57 of the first brief we filed in the district court in Chicago. Three propositions are stated. I am going to read each of the propositions and comment on them separately because it seems to me that this is a matter of enough importance to deserve detailed comment.

The first proposition reads as follows:

1. In time of war, the President has power to take possession of property of citizens when required for the prosecution of the war, subject, of course, to the requirement of the fifth amendment that fair compensation be paid for the taking and use of the property.

This is the original brief filed in the case. Earlier in my statement I have discussed the authorities and the precedents that support this conclusion. No purpose will be served by repeating them. I merely point out here as I did there that the power is not unlimited. This statement itself contains two important limitations: (1) The property must be required for the prosecution of the war, and (2) fair compensation must be paid—there is no possibility of confiscation. You will note that this prosecution begins by stating that the power exists "in time of war." This indicates a third important limitation that I have referred to earlier in the statement and that I emphasized in my brief; that is, that the power is a power to act in an emergency.

I now come to the second proposition which has been widely misinterpreted. It reads as follows:

2. No business or property that is essential to the conduct of the war is immune from the exercise of that power, subject, again, to the requirement of fair compensation imposed by the fifth amendment.

I call your attention to two points about this statement: (1) The statement is confined to a business or property "that is essential to the conduct of the war." (2) The statement is directed to the question of whether particular kinds of property are immune simply because of their nature. This point was necessary in the brief because much of the argument of Montgomery Ward in the district court seemed to assume that there was something peculiar about the nature of a mail-order business that gave it immunity from the war powers of the President. I am not now speaking on the interpretation of section 3, I am speaking on the general question of what kind of power is necessary to seizure under the statute or out of the statute. In fact, at times during the argument of counsel for Montgomery Ward, you might have supposed that although all of the rest of us are at war, Montgomery Ward was enjoying some kind of a separate peace. The point that I was making here is that property is not immune because of its nature. The test in any particular case is whether the power that is being exercised is the kind of power that exists in the absence of statute and whether there is reasonable ground

to believe that there is an emergency or impending crisis that makes the exercise of the power appropriate in that case. Here, again, I call your attention to the fact that the statement expressly refers to the limitation imposed by the fifth amendment which prevents the confiscation of property. This was not an argument that the President has the power to seize every retail store and every corner grocery. It was an argument that a company enjoys no special immunity because it is in the mail-order business.

The third proposition read as follows:

3. In time of war, the courts will not substitute their judgment for that of the President, or review his determination as to the gravity of the emergency or the necessity of the taking of the particular property;

In other words, if the exercise of the President's authority is not arbitrary, is not unreasonable, the courts will not substitute their judgment as to whether an emergency exists, or as to the nature of the emergency.

This proposition does not assert that the exercise of the power is not subject to review by the courts. Of course, it is subject to judicial review in the ordinary sense in which any exercise of administrative power may be tested in the courts. In this case we took the initiative and submitted the issue to the courts. What the statement says is that the courts will not, as I have said, substitute their judgment for that of the President, or review his determination as to the gravity of the emergency or the necessity for the taking. The court will confine itself to determining whether reasonable grounds exist to sustain the President's judgment or whether he acted arbitrarily. The statement is carefully limited; it is the gravity of the emergency or the necessity for taking particular property to which the statement about review is addressed.

This is not a novel doctrine. I did not invent it. The courts have repeatedly approved it in the requisition cases which I cited in my brief. If court review is somewhat more limited in these cases than it is in other fields, we should remember that one of the reasons for this is that requisition is always accompanied, as in this case, by the right to fair compensation. In many of the cases cited in the brief the court was dealing with situations in which the President was acting under a statute. But this distinction does not affect the scope of review. The fundamental question is always whether the power exists and whether it has been exercised in an unreasonable or arbitrary way. As the district court said on May 9 of this year in the *Ken Rad* case, where it upheld the authority of the President to take possession of a plant:

Charged with the grave responsibility of preserving a Government which guarantees the property rights of individuals the Chief Executive as Commander in Chief must not be hampered in the prosecution of the war effort. His exercise of authority to this end is subject only to the review by the court that his actions are not arbitrary or without reasonable justification.

This is the United States District Court for the Western District of Kentucky speaking.

Mr. MAY. MacSwinford.

Mr. BIDDLE. MacSwinford.

To continue with the quotation:

With this limitation there need be no fear that constitutional government as we know it in these United States will be abolished, destroyed, or impaired.

VIII. CONCLUSION

In concluding let me say that I realize, of course, that there is room for disagreement on the legal aspects of the Ward case. But no Attorney General in advising the President can do more than interpret the law as he sees it, trusting to the courts to correct him if he is wrong and to Congress to make any changes in the law which it deems wise. With respect to this case, I can only say that I believe now as I did when I gave the President my opinion that he had the authority to take over the Montgomery Ward plant in Chicago and that the courts would sustain his authority.

It may be that as a result of these hearings, this committee will believe that certain changes should be made in the provisions of the War Labor Disputes Act. I am in favor of any changes that will make the meaning of the act clearer and remove any doubts as to its application to particular situations. I agree with Mr. Davis' view that it is highly desirable that the act be so drawn that no foreseeable emergencies will fall outside the scope of its provisions. If changes are to be made, there are two points that, I respectfully submit, require careful consideration. In the first place, no statute designed to deal with wartime labor disputes should depend for its application on technical distinctions between manufacture and production, on the one hand, and other essential economic operations and services, such as stevedoring, which seems to me to be the best example I can think of, on the other. Labor disputes can arise in these other services and operations that are just as devastating in the effect upon the war as disputes in manufacturing plants.

In the second place, if you do not agree with my conclusion that sections 3 and 7 are coextensive in scope, then this point should be dealt with by amendatory legislation. The power of the President to deal with labor disputes arising because of defiance of the Board's orders should not be narrower than the Board's power to decide. I think Mr. Davis pressed that point very hard day before yesterday when he said one of the worst things you can do in a democracy is to provide for final decision and to provide no way for carrying that decision into effect, because it breaks down all responsibility and sense of belief in the ability to enforce the law. Otherwise, Congress will have imposed a responsibility upon the Board but withheld the authority that is necessary if that responsibility is to be effectively discharged.

If the Congress believes that in this case the President exceeded his statutory authority, that authority should be clearly defined so that he may be guided accordingly.

(The following statements and opinion were submitted by Mr. Biddle in connection with his oral statement:)

STATEMENT BY N. M. DI PIETRO, EXECUTIVE SECRETARY, CHICAGO PRINTING TRADES UNION

STATE OF ILLINOIS,

County of Cook, ss:

N. M. Di Pietro, being first sworn, on oath says:

Members of the Chicago Printing Trades Union followed the strike of Local 20 members, employed by Montgomery Ward & Co., with exceptionally great interest. The strike was the No. 1 topic of discussion in most of the chapels. Our respective unions (totaling approximately 20,000 members in the Chicago area) have rendered

financial and moral support to the employees on strike. Collections were taken up in numerous union departments and the collections, in addition to union contributions, have been turned over to Local 20.

Our members are particularly interested in the Montgomery Ward situation because for many years mail order catalogs for Montgomery Ward have been printed in great part by the notoriously antiunion R. H. Donnelly & Sons Co. concern of Chicago. Late in 1942, the Chicago Printing Trades Union refused to process any work destined for or emanating from the Donnelley plant. The National War Labor Board, in public hearings in Washington, indicated that the processing of such work was related to the war effort. Now the Montgomery Ward & Co. contends that it is not involved in the war effort. If so, it follows that the printed illustrations of Montgomery Ward's equipment and machinery set forth in the catalogs is not related to the war effort.

When the Montgomery Ward employees went on strike and no action was taken by our Government, our executive officers sat in special session to consider the matter and ordered an investigation of all Montgomery Ward printing being handled in union shops with the view in mind of protecting the interests of our unions, including hundreds of Donnelley employees. The investigation was nearly complete when President Roosevelt terminated the strike by ordering seizure of the Montgomery Ward plant. The agitation of our members, caused by Ward's clear-cut defiance and by the failure of the responsible enforcement agencies to take action, was constantly increasing and was leading to ever-mounting demands for action by our unions. Had the strike not been terminated, this could very well have led to definite action in support of the Ward strikers.

N. M. DI PIETRO.

Subscribed and sworn to before me this 5th day of May 1944.

ALBERT SCHWARTZ, Notary Public.

STATEMENT BY MAURICE F. McELLAGOTT, SECRETARY-TREASURER, ILLINOIS STATE INDUSTRIAL UNION COUNCIL, COMPRISING AFFILIATED CONGRESS OF INDUSTRIAL ORGANIZATIONS UNIONS WITHIN THE STATE OF ILLINOIS

When the Montgomery Ward strike first took place in the city of Chicago, the implications of such a strike spreading to other war plants were so serious that the matter was discussed by members of the executive board of the Chicago Industrial Union Council, of which board I am a member, and serious recognition was given to the possibility of sympathetic outbreaks amongst workers in vital war plants in this area.

Shortly after the strike began, I had occasion to go to Washington, accompanied by the president and secretary, respectively, of the Chicago Industrial Union Council, Mr. Herbert March and Mr. Michael Mann. While there, Mr. March informed me he had just received a telegram from top labor officials in the Chicago area, warning of the imminent outbreak of strikes and urging Government intervention in the Montgomery Ward situation. Immediately, accompanied by Mr. James Carey, secretary-treasurer of the Congress of Industrial Organizations, and Leo Goodman, representative of the U. R. W. & D. S. E. A., we met with Mr. Phillip Murray, president of the Congress of Industrial Organizations, at which time we discussed the possible wave of sympathetic strikes in the Chicago area as a result of Avery's attack on the War Labor Board. Immediately after that meeting we met with Mr. Fred Vinson, Director of Stabilization, and brought the gravity of this matter to his attention. We informed Mr. Vinson that unless the Government stepped into the situation we could not guarantee stable industrial relations in the Chicago area. It was apparent that the feeling in Chicago was running very high and we were afraid of possible consequences which would impede and delay production of vital materials needed in the war effort.

MAURICE F. McELLAGOTT.

Subscribed and sworn to before me this 5th day of May 1944.

[NOTARY SEAL]

FLORENCE L. PRINCE, Notary Public.

134 INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

STATEMENT BY WALTER C. CHRISTENSEN, CHAIRMAN, JOINT LODGE No. 119,
BROTHERHOOD OF RAILROAD TRAINMEN

On April 15, 1944, some of us officers of the brotherhood held a meeting with Mr. Gillick, the chief operating officer of the Chicago, Milwaukee, St. Paul & Pacific Railroad, for the purpose of serving notice on the railroad that we would not perform any other work at Ward's, during the strike there, than our customary duties up to the time that the strike started. We made the cut-off time on new business Saturday night, April 15. However, the management made numerous attempts to force us to do new and different work.

First, they injected the Galewood trap car, which is a kind of common freight car. We had not handled this kind of freight car for 15 years. Our customary duties, prior to the strike, was to place loaded cars in the Ward plant and take the empties out. During the strike, they ordered empties and loads into their plant and used some as trap cars, for the purpose of our men to handle the mail. These trap cars were loaded with mail at both ends and merchandise in the doorway and were consigned to the Galewood freight house. The merchandise in the doorway was taken out and the mail reconsigned to the mail chutes at the Union Station. This business, prior to the strike at Ward's, was all handled by contract trucking companies and the truck drivers refused to handle this business during the strike. Our men, likewise, refused to handle the trap cars.

Then the railroad management tried to make us handle road loads out of the plant. I have had several telephone calls from our men, wanting to refuse to go into the Schwinn plant and they would wait on the main line, with their train, at Hermosa, until they made contact with me while I was in conference in the chief operating office at the Union Station.

At 12 o'clock, midnight, on Wednesday, April 19, the superintendent, assistant superintendent, and trainmaster of the Chicago, Milwaukee & St. Paul, called a conference of the two midnight crews switching in the Kinzie Street district, in an attempt to intimidate these men into doing the work at Montgomery Ward's. These men resented the action and refused to do this work. On the following afternoon, the superintendent, trainmaster, and traveling engineer took the engine from the switchmen and moved cars in and out of Montgomery Ward's plant. The following afternoon they did the same thing. Then action was taken by our men not to move the cars and on Sunday, April 23, the officers again came with an engine to move the cars out of the district. Then they were told that if they (the officers) moved the cars out of the district, they would stay where they were and they would become intermingled with other cars and all cars would then be tied up. We told the management of the railroad that if those cars were placed in road trains, then we would tie up the road trains and, if placed in connecting line trains, we would tie up the connecting line trains. "Connecting lines" means railroad lines other than the Chicago, Milwaukee & St. Paul, such as the Pennsylvania Railroad, the New York Central, the Belt Railway, the Chicago Junction Railway, and the Indiana Harbor Belt Railroad.

Due to the pressure put on the railroad officers by Montgomery Ward's officers, the railroad officers resorted to drastic action in intimidating our men and continually attempted to force them to perform other than their customary duties at the Montgomery Ward Chicago Avenue plant. In this way a great deal of tension and bad feeling was building up, day by day. If this strike at Montgomery Ward's would have continued much longer, due to the temper of the men, we have grave doubts whether we could have held them in check. In other words, there was grave possibility that if the strike had not ended on the President's order, when it did, that the railroad lines in the entire Chicago area might have been tied up.

WALTER C. CHRISTENSEN,
Chairman, Joint Lodge No. 119,
Brotherhood of Railroad Trainmen.

Subscribed and sworn to before me this 4th day of May A. D. 1944.

[SEAL]

CAROLINE MULLER,
Notary Public, County of Cook, Ill.

My commission expires as of January 22, 1947.

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO. 135

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT
OF KENTUCKY, OWENSBORO DIVISION

No. 132

Ken-Rad Tube & Lamp Corporation, Owensboro, Ky., plaintiff, v. Carroll Badeau,
defendant

OPINION

This case is before me on the plaintiff's motion for a permanent injunction and on the defendant's motion to dismiss the complaint. The record is complete and it is finally submitted for determination on its merits.

The plaintiff, the Ken-Rad Tube & Lamp Corporation of Owensboro, Ky., seeks to permanently enjoin the defendant, Carroll Badeau, from placing in effect, in any of its plants, an order of the National War Labor Board, pertaining to certain wage readjustments in the plaintiff's plants and to permanently enjoin the defendant from seizing or holding possession of or operating any properties of the plaintiff.

The plaintiff is, and has been for many years, successfully engaged in the manufacture of radio tubes and incandescent lamps, with plants located at Owensboro and Bowling Green, Ky., and Tell City, Huntingburg, and Rockport, Ind. It employs approximately 5,000 people.

The defendant, Carroll Badeau, who is a colonel in the United States Army and acting under orders from his superiors, has seized possession of the plaintiff's properties.

The entire plants and properties of the plaintiff, insofar as this lawsuit is concerned, have been, were at the time of the seizure, and are now and will continue to be admittedly devoted exclusively to the manufacture of essential war material.

The source of the authority claimed by the defendant for his action in seizing the property is an order of the President of the United States, dated April 13, 1944, and addressed to the Secretary of War. The order is preceded by the following recital:

"Whereas, after investigation I find and proclaim that there is a threatened interruption of the operation of the plants and facilities of Ken-Rad Tube & Lamp Corporation and Ken-Rad Transmitting Tube Corporation, located at Owensboro, Ky., as a result of a labor disturbance, and that the war effort would be unduly impeded or delayed by such interruption:

"Now, therefore, by virtue of the power and authority vested in me by the Constitution and laws of the United States, including section 9 of the Selective Training and Service Act of 1940, as amended, as President of the United States and Commander in Chief of the Army and Navy of the United States, it is hereby directed as follows:"

It is contended by the plaintiff that the seizure is without authority of law; that the order of the President was based primarily upon a report to him of the War Labor Board that the labor conditions in the plaintiff's plants were in an unsettled state and that production would be hampered, retarded, or stopped by labor disputes and threatened strikes; that all of this was caused by the fact that the plaintiff had refused to put into effect an order of the War Labor Board.

The plaintiff admits that it declined to abide by the order of the War Labor Board, but states that the order was void and of no effect, because of the failure of the Board to accord the plaintiff a hearing, the unlawful assumption of the rule-making power by the Board, the unlawful reduction of the beginner's training period, the unlawful retroactive effect of the order, the unlawful participation of employees representatives in the Board's order, and the imposition of confiscatory wage rates, which did not comply with the provisions of the act that any order of the Board should be fair and equitable.

To summarize the plaintiff's position in this effect, it reasons that since the order of the President directing the seizure of the plant was based upon a fear of threatened strikes, and the threatened strikes were the result of the failure of the plaintiff to abide by an order of the War Labor Board, and the order of the War Labor Board was invalid because of the above-enumerated reasons, then the order of the President was invalid and there could, therefore, be no seizure.

I do not think that the determination of this case depends upon whether or not the order of the War Labor Board was valid or invalid.

The decision must be based upon either constitutional or statutory authority vesting in the President a legal right to issue such an order. If he had that right,

by statutes, or in the absence of adequate statutes, the right under the Constitution, the plaintiff has failed in the case and its complaint should be dismissed. Or if it be determined from the record that, even though he might have had the right, he acted arbitrarily and without cause in issuing such an order, then the prayer of the plaintiff's complaint should be sustained and an equitable order entered.

It is my judgment that this case, and all others like it, may be reduced to a simple formula: Did the President act arbitrarily in ordering the facilities to be taken by the Army? Proof that he did so act shall be upon him who asserts it.

If this seems to be an extreme view, it should be called to the attention of those who so claim that, with the country at war, fighting for its very existence, extremities are commonplace. No war hysteria should prompt the adoption of basically unsound legal reasoning; neither should blind complacency or a false sense of the country's security cause the court of the land to grant to those charged with preserving the Nation less than the full measure of constitutional and legislative authority.

Before going into the determination of this case on its merits it is necessary to consider and pass upon certain defenses. It is first contended that the suit here is one against the United States to which the United States has not consented. In support of this position the defendant cites: *New Mexico v. Lane* (243 U. S. 52); *Louisiana v. Garfield* (211 U. S. 70); *Minnesota v. Hitchcock* (185 U. S. 373); *Nagenab v. Hitchcock* (202 U. S. 473). I do not believe any of these cases warrants the court in dismissing this proceeding. While I of course, acknowledge the general rule as laid down in each of these cases, it is a well-recognized exception, that where the Government acquires property from a party to a pending suit, its rights in such property are subject to the results of the litigation the same as would be those of an individual. *Re Ward et al. v. Congress Construction Company* (99 F. 598); *Philadelphia Company v. Stimson* (223 U. S. 605); *Miguel v. McCarl* (291 U. S. 442); *Payne v. Central Pacific Railway Company* (255 U. S. 229).

In the case of *Work v. Louisiana* (269 U. S. 250) the Secretary of the Interior was proceeded against for injunctive relief by the State of Louisiana to present rejection of a claim to land upon what was alleged to be an erroneous interpretation of the law. The opinion stated:

"It is clear that if this order exceeds the authority conferred upon the secretary by law and is an illegal act done under color of his office, he may be enjoined from carrying it into effect. *Noble v. Union River R. R.* (147 U. S. 165, 171, 172); *Garfield v. Goldsby* (211 U. S. 249, 261, 262); *Lane v. Watts* (234 U. S. 525, 540); *Payne v. Central Railway* (225 U. S. 228, 238); *Santa Fe Pacific Railroad v. Fall* (259 U. S. 197, 199); *Colorado v. Toll* (268 U. S. 228, 230). A suit for such purposes is not one against the United States, even though it still retains the legal title to the land, and is not an indispensable party. *Garfield v. Goldsby* (supra pp. 260, 262); *Lane v. Watts* (supra, p. 540)."

In the recent case of *Ickes, etc., v. Fox* (300 U. S. 82) it was sought to enjoin the Secretary of the Interior from enforcing an order, the wrongful effect of which was to deprive respondents of vested property. The question was made that the United States was an indispensable party, but the Supreme Court held that such a suit could be maintained without the President of the United States and that its proceeding rests upon the authority of many cases from that court. Certain cases were cited among which were some of those to which I have referred.

It is further contended that the suit should be dismissed for lack of indispensable parties. It is urged that Carroll Badeau, the defendant, had no choice other than to comply with the order of the President and that he was acting purely in a ministerial capacity and that if the injunction would lie, it should have been brought against his superior, even to the extent of making the President a party.

I think the action here is one in which the right of the parties may be determined, where the injunction is sought against the agent with as much propriety as if it were thought to restrain the principal, had he been within the jurisdiction of the court. *Osborn v. Bank* (9 Wheat. (22 U. S. 738).

In the case of *Ryan v. Amazon Petroleum Corporation* (71 F. (2d) 1) and more particularly identified as the now historic "Hot Oil" case, the circuit court of appeals said:

"(1) 1. The Secretary of the Interior is not personally doing or threatening the acts of trespass and of prosecution which are thought to be enjoined. Although the actors may be authorized and incited by him so that he would be a proper codefendant if he were within the court's reach, the court has power to stop the trespassing by those within its jurisdiction irrespective of their claim that they

are acting for others. *Osborn v. Bank of the United States* (9 Wheat. 738, 6 L. ed. 204); *State of Colorado v. Toll* (subt., 268 U. S. 228, 45 F. Ct. 505, 69 L. ed. 927). This is not a bill to cancel the secretary's regulations, but only to test their efficacy to protect defendants in their alleged trespasses against complainant's right. There is no more need to make the Secretary a party for this purpose than to make the President a party because he promulgated the code or of the Congress because it enacted the statutes."

It should be pointed out that in this case, or cases, since it embraced also the *Panama Refining Company* case, the Supreme Court reversed the circuit court of appeals in its decision, but not on the jurisdictional grounds to which the language above quoted is addressed.

I must conclude that the jurisdiction of the court must be sustained.

We now come to the determination of the case on its merits. I must confess that the position of the plaintiff is somewhat obscure and it is not entirely clear to me just what it is seeking to have done. The original complaint asks, among other things, that the defendant be permanently enjoined from "holding possession of or operating any properties of the plaintiff." In the brief which was filed after the oral argument, the plaintiff seems to undertake to convey to the court the idea that it has no serious objection to the using of the property so long as the present occupant does not put into effect and force the order of the President as it directs in compliance with the wage increase and back-pay provisions of the order of the War Labor Board.

It must be obvious to the plaintiff that these two things cannot be separated in a proceeding of this kind, and it cannot expect to resort to the general equity powers of the court on its prayer for general equitable relief. If the President, by reason of the statutes or by his constitutional powers, has authority, and is justified in the exercise of that authority, to take over the plant, he would certainly have authority to determine and designate the basis on which it was to be operated.

This plant is at present being operated by the Government with Government funds. The method of the Government in operating any business which it has the right to operate cannot be questioned on the basis of a complaint which attacks its right to operate business at all.

The War Labor Disputes Act, by section 3, amends section 9 of the Selective Service and Training Act of 1940. For the purpose of clarity, I think it is best to quote this section in full:

"SEC. 3. Section 9 of the Selective Service and Training Act of 1940 is hereby amended by adding at the end thereof the following new paragraph:

"The power of the President under the foregoing provisions of this section to take immediate possession of any plant upon a basis to comply with any such provision, and the authority granted by this section for the use and operation by the United States or in its interest of any plant of which possession is so taken, shall also apply as hereinafter provided to any plant, mine, or facility equipped for the manufacture, production, or mining of any article or material which may be required for the war effort or which may be useful in connection therewith. Such power and authority may be exercised by the President through such department or agency of the Government as he may designate, and may be exercised with respect, to any such plant, mine, or facility whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility as the result of a strike or other labor disturbance, that the war effort will be unduly impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort: *Provided*, That whenever any such plant, mine, or facility has been or is hereafter so taken by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause, such plant, mine, or facility shall be returned to the owners thereof as soon as practicable, but in no event more than sixty days after the restoration of the production efficiency thereof prevailing prior to the taking of possession thereof: *Provided further*, That possession of any plant, mine, or facility, shall not be taken under authority of this section after the termination of hostilities in the present war, as proclaimed by the President, or after the termination of the War Labor Disputes Act; and the authority to operate any such plant, mine, or facility, under the provisions of this section shall terminate at the end of six months after the termination of such hostilities as so proclaimed."

If this is a constitutional enactment and there is no showing that the President acted arbitrarily, coupled with the acknowledged fact that the plants in question were engaged exclusively in the manufacture of essential war materials, the defendant's position must be sustained.

It is not claimed that this act is unconstitutional. The records fail to disclose any grounds upon which the court could find that the President, in issuing the order, acted arbitrarily or without cause. He was not bound by the finding of the War Labor Board that even though they might have been based upon erroneous procedure or wrongful construction of facts, the President may have had other facts on which he determined his course. It is certain that there is ample evidence in the record that there was a threatened strike and a serious threat to production by reason of that fact, that even had the records not conveyed that, it is my judgment that section 9 does not confine the President to any one field of information but that he may make his own independent investigation and, subject to the determination by the courts that his action was not arbitrary, may act to prevent a cessation of operation of any plant or business or other agency which might be utilized to contribute to the war effort.

I further conclude that without an act of the Congress there was sufficient authority by the terms of the Constitution itself to justify the action of the President in this case. The President has no power to declare war, that belongs exclusively to Congress. But when the war has been declared and is actually existing, his functions as Commander in Chief became of the highest importance and his operations in that connection are entirely beyond the control of the Legislature. There develops upon him by virtue of his office a solemn responsibility to preserve the Nation and it is my judgment that there is specifically granted to him authority to utilize all resources of the country to that end.

The Constitution is nothing more than a charter of rights and authority from the people to their government. That government consists of the individuals who as officials are in charge of its affairs at a given time. In order to determine what the people had in mind when they made this specific grant of power we must necessarily consider it in the light of circumstances as they existed at the time of the grant. We must recall that at that time the Nation was very weak. Its preservation from invasion or occupation by a foreign power was uppermost in the minds of the people. Although the Government was weak, it ruled a vast and rich country which attracted the dictators and excited the avarice of war lords of that day as it does now. It should be borne in mind that while modern instruments of warfare make America more vulnerable than in times past, then what is now the territory of the United States was actually occupied by armies of foreign powers.

I mentioned these things merely to emphasize that it must surely have been uppermost and foremost in the minds of the writers of the Constitution of those whom they represented and those who later adopted it, that the President as Commander in Chief of the Army and Navy of the United States was not to have to resort to a lengthy procedure in order to defend at a moments notice the very agencies which he might be seeking to use.

Charged with the grave responsibility of preserving a government which guarantees the property rights of individuals the Chief Executive as Commander in Chief must not be hampered in the prosecution of the war effort. His exercise of authority to this end is subject only to the review by the court that his actions are not arbitrary or without reasonable justification. With this limitation there need be no fear that constitutional government as we know it in these United States will be abolished, destroyed, or impaired.

The prosecution of the war is the business of the executive branch of the Government. What is necessary to that end must necessarily rest in the authority of the officials of that branch of the Government. Their decisions must necessarily in many instances be based upon facts which they cannot make public or submit to debate. There has never been a time in the history of the world when such a policy was more properly applied than in this present emergency, with the United States engaged in prosecuting a defensive war on many fronts scattered over all parts of the world and with implements of modern warfare subjecting her Territories and mainland to imminent danger of actual invasion in the course of a few hours and with a part of her possessions occupied by enemy forces. It is sheer folly to say or pretend that the Government should admit of the slightest delay for any cause of the production of war materials made by the plants involved in this lawsuit.

This position is not only substantiated by reason and principle but is merely a restatement of what has always been accepted as the correct judicial interpretation of the functions of the President in times of war or emergencies.

It is well said in a recent case, *Alpirin v. Huffman* (49 Fed. Supp. 337):

"Defensive measure which, a century ago, might have awaited deliberation and the orderly course of judicial process, must now be taken resolutely and immediately. Science has changed not alone the methods of formal warfare, but also and especially the relationship to it of the civilian population."

In the old case of *United States v. Russell* (80 U. S. 623, 13 Wall. 623), the court said:

"Private property, the Constitution provides, shall not be taken for public use without just compensation, and it is clear that there are few safeguards ordained in the fundamental law against oppression and the exercise of arbitrary power of more ancient origin or of greater value to the citizen, as the provision for compensation, except in certain extreme cases, is a condition precedent annexed to the right of the Government to deprive the owner of his property without his consent. Extraordinary and unforeseen occasions arise, however, beyond all doubt, in cases of extreme necessity in time of war or of immediate and impending public danger, in which private property may be impressed into the public service, or may be seized and appropriated to the public use, or may even be destroyed without the consent of the owner. Unquestionably such extreme cases may arise, as where the property taken is imperatively necessary in time of war to construct defenses for the preservation of a military post at the moment of an impending attack by the enemy, or for food or medicine for a sick and famishing army utterly destitute and without other means of such supplies, or to transport troops, munitions of war, or clothing to reinforce or supply an army in a distant field, where the necessity for such reinforcement or supplies is extreme and imperative, to enable those in command of the post to maintain their positions or to repel an impending attack, provided it appears that other means of transportation could not be obtained, and that the transports impressed for the purpose were imperatively required for such immediate use."

Who can say that at this time such an emergency, as contemplated by the language of this opinion, does not now exist? See, also, *Mitchell v. Harmony* (54 U. S. 115, 13 How. 115); *Marbury v. Madison* (5 U. S. 137, 1 Cr. 137); *Mississippi v. Johnson* (71 U. S. 474, 4 Wall. 475). The case of *Alpirin v. Huffman*, supra, is an excellent opinion and has an accumulation of authorities on this and related points of law.

The Attorney General of the United States has recently made the following pertinent statement in an opinion on a similar situation. I quote:

"The fact that the initial impact of these disturbances is on the production or distribution of essential civilian goods is not a reason for denying the Chief Executive and the Commander in Chief of the Army and Navy the power to take steps to protect the Nation's war effort. In modern war the maintenance of a healthy, orderly, and stable civilian economy is essential to successful military effort. The Congress has recognized this fact by enacting such statutes as the Emergency Price Control Act of 1942; the act of October 2, 1942, entitled, 'An Act to Amend the Emergency Price Control Act of 1942 and to Aid in Preventing Inflation, and for Other Purposes'; the small business mobilization law of June 11, 1942; and the War Labor Disputes Act."

In addition to the long and unbroken chain of authorities for what I believe to be a most rational view of the situation presented by the record in this case, the Supreme Court in the now famous case (decided June 21, 1943) of *Hirabayashi v. United States* (320 U. S. 81), on page 93 of the opinion said:

"The war power of the National Government is 'the power to wage war successfully.' See Charles Evans Hughes' War Powers Under the Constitution (42 A. B. A. Reports 232, 238). It extends to every matter and every activity so related to war as substantially affect its conduct and progress. The power is not restricted to the winning of victories in the field and the repulse of enemy forces. It embraces every phase of the national defense including the protection of war materials and the members of the armed forces from injury and from the dangers which attend the rise, prosecution, and progress of war. Prize cases, supra; *Miller v. U. S.* (11 Wall. 268, 303-14); *Stewart v. Kahn* (11 Wall. 493, 506-507); *Selective Draft Law cases* (245 U. S. 366); *McKinley v. U. S.* (249 U. S. 197); *U. S. v. MacIntosh* (283 U. S. 605, 622-667, 623). Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and conditions of warfare it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it. *Ex parte Quirin* (supra 28-29); cf. *Prized cases* (supra, 670); *Martin v. Mott* (12 Wheat. 19, 29). Where, as they did here, the conditions called for the exercise

of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war making, it is not for any court to sit in the view of the wisdom of that action for substitution of its judgment for theirs."

I am of the opinion that the President's order was valid, that the motion for a permanent injunction should be denied, and that the defendant's motion to dismiss should be sustained.

Since I conclude that the order of the President does not rest upon the validity of the order of the War Labor Board, it is not necessary or proper that I should pass upon the question which the plaintiff poses as the "unlawfulness of the War Labor Board order."

The United States must, of course, compensate the plaintiff for the use of the property and a determination of the validity of the War Labor Board order would more appropriately arise in the determination of what is to be just and adequate compensation.

Proper orders should be submitted in conformity with this opinion.

MAC SWINFORD, *Judge*.

Date: May 9, 1944.

Attorneys for plaintiff: Thomas G. Sandidge, Owensboro, Ky.; Wilbur K. Miller, Owensboro, Ky.; Mac O'Rell Truitt, Washington, D. C.; Carl McFarland, Washington, D. C.

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The CHAIRMAN. Mr. Clark.

Mr. CLARK. Mr. Biddle, I am not quite sure as to just what capacity I would be sitting in here, whether as a judge or juror, or what, but there is one feature of this matter that I should like to have your view on. I will put it this way: passing over for the moment the provisions of section 3 and coming down to section 7, it seems to provide that the War Labor Board not only has the authority but it is made its duty where a dispute arises to give notice to the parties, and I believe it uses the words "summon the parties before the Board." It also provides that they shall have the right to subpoena witnesses, books, records, and paper, and then it says that the "Board shall decide the dispute." The exact language is the Board shall have the power "to decide the dispute, and provide by order the wages and hours and all other terms and conditions", and so forth, "which [order] shall be in effect until further order of the Board." Does that, to your mind, approach pretty closely to the kind of a judicial function that is the function of a court?

Mr. BIDDLE. I think not, sir. I take it your question is directed to the enforceability of the War Labor Board's order.

Mr. CLARK. Not yet.

Mr. BIDDLE. Excuse me. I think it is not a judicial function; my answer is that the Board does not perform a judicial function.

Mr. CLARK. Well, quasi judicial?

Mr. BIDDLE. I would not even accept quasi judicial, Mr. Clark.

Mr. CLARK. I am a little interested to know why not, because when the law directs them to give notice to the parties, to summon parties and subpoena the witnesses, and to hear and decide the controversy and enter an order, how much does that lack of being quasi judicial?

Mr. BIDDLE. The procedure of the Board is based on an orderly quasi judicial procedure, but as in the Railroad Labor Board Act, which I shall refer to later, the Board's decision is solely a recommendation, it has no enforceability in the sense that a court's order can be enforced. In other words, the distinction between the Board and a court is that although the Board has certain functions which are like

that of a court, orderly procedure and the power to subpoena, nevertheless, it is perfectly clear from the decisions of the Supreme Court and from the legislative history of the statute that the order entered by the Board is in no sense like a judgment entered by a court. Does that answer your question?

Mr. CLARK. Well, why isn't it? What is the difference?

Mr. BIDDLE. I think I will have to go into some detail on the question of procedure. If I go into too much detail, you stop me.

Mr. CLARK. We will pass over that for the moment.

Mr. BIDDLE. May I just mention this, Mr. Clark, it will not take very much time. This procedure is now new; it is not a new thing which has been turned on in this country. The language of the act is pretty much like the language, as I said before, of the Transportation Act of 1920, which establishes the United States Railroad Labor Board. The same language practically was used in that act. The question when it came to the Supreme Court, was whether a decision of that Railroad Labor Board was reviewable in court, and the United States Supreme Court held no. Comparing the language in the two acts, it seems to be pretty clear from the legislative history that this order of the War Labor Board was not intended to be enforced in a court.

Mr. CLARK. Now, when it gets down to the enforcement of the Board's order—which is the point that I intended to get to—in the course of these hearings it has been suggested that upon the Board's order in this case the Government might have applied for mandatory injunction.

Mr. BIDDLE. Yes, sir.

Mr. CLARK. What do you think about that?

Mr. BIDDLE. When we discussed the taking over of the Montgomery Ward plant, in discussions with Mr. Byrnes and with the War Labor Board that was suggested by those who were not thoroughly familiar with the act itself, and we convinced everybody that the Government had no standing in a court to enforce the order of the War Labor Board.

Let me quote in that connection the language of the other statute, because it is so similar. The language is this [reading]:

Upon the Railroad Labor Board's own motion, if it is of the opinion that the dispute is likely substantially to interrupt commerce—

note the closeness of the language, the Railroad Labor Board, and I quote again—

shall receive for hearing and decide all disputes—

and that the decisions of the Board, I quote again—

shall establish standards of working conditions which are just and reasonable.

The Supreme Court held that that was not subject to enforcement in the courts. Would you like a citation of the cases?

Mr. CLARK. That is in your statement?

Mr. BIDDLE. No; it is not.

Mr. CLARK. I would like the citations.

Mr. BIDDLE. Perhaps it would be simpler for the committee if I handed a summary which I have in appendix B here, a summary of the legislative history, a summary of the Supreme Court cases to

illustrate this case. I am told a copy of it is attached to our brief which has been submitted to the committee.

Let me just quote from one Supreme Court case, one very recent case, the *Pennsylvania Federation v. Pennsylvania Railroad Company*. The Supreme Court said this [reading]:

It was contended as these decisions were final and that as the Board had complete power over labor disputes, that that must be reviewable.

The Court said, and I think the language is interesting, because the language indicates, just as I have said, that you must look at the whole statute to discover its meaning and not pick out one section:

When the other sections of the title are taken as a whole they may be searched through in vain to find any indication in the mind of Congress or any intimation that the disputants in the controversies to be anticipated were in any way to be forced into compliance with the statute or with the judgment pronounced by the Labor Board except for the effect of adverse public opinion.

Mr. CLARK. I am inclined to the view, too, that the orders of the Board are not reviewable in a court, because if one side could apply for a mandatory injunction, why, then, of course, the opposition would have the same right to apply for an injunction against the enforcement of the order which would throw everything that the Board did into litigation, would it not?

Mr. BIDDLE. Yes, sir.

Mr. CLARK. I believe you have in your brief that Congress expressly declined to make the order reviewable in a court. Is that correct?

Mr. BIDDLE. Yes. An attempt was made to put that in one of the drafts and it was specifically taken out by the House, or taken out in conference, as the result of Mr. Davis' letter, which I think he introduced in the hearing here.

Mr. CLARK. It is pretty clear from the record that Congress expressly refrained from making the orders of this Board enforceable, or I might say contestable in the courts.

Mr. BIDDLE. I think it is fair to say to the committee that the courts are not in agreement on that. Two district courts have held that view, that they are not enforceable, Judge Goldsborough here and I think there is one other unreported decision of Judge Druffel which held otherwise. That question is now in the Circuit Court of Appeals for the District of Columbia.

Mr. CLARK. Here is the problem in my mind: Congress has passed this section 7 in which it has authorized the Board in these particular cases, where there is a dispute that may have a serious effect upon the war effort, to have these hearings, to subpoena the parties, to summon the parties, to go into the whole question, and especially authorized it to decide that question, and when they have heard all the parties and reached a decision, to enter an order, and that that order shall remain in effect until the further order of that Board. Now, they can do all that, and they are directed to do all that, but if that order is not enforceable by some means or by somebody, where do we get to by that provision?

Mr. BIDDLE. I suppose we get to it by just what Montgomery Ward did.

Mr. CLARK. What?

Mr. BIDDLE. We get to it just as Montgomery Ward did.

In other words, if the War Labor Board is not obeyed, then the Executive has the right to take over the plants specifically.

Mr. CLARK. Could Congress have possibly intended to set up a board like this, to authorize it to hear and determine and order in vain, without it having some ultimate effect upon the remedy?

Mr. BIDDLE. I am not sure that I understand your question, Mr. Clark. Let me put it this way: Practically speaking, the President enforces the order of the War Labor Board. Now, legally, as far as going into the courts is concerned, the Congress felt that if you wanted to settle strikes in a war, you could not afford to go through the procedures of a court to settle them, having in mind, let us say, the standard time that N. L. R. B. takes to enforce its orders, some 200 days. So, practically speaking, Congress said the Board must decide these things promptly.

Mr. CLARK. Yes.

Mr. BIDDLE. And then to enforce them the President has the power to seize.

Mr. CLARK. That is the milk in the coconut. Would Congress have done all this without intending that somebody would have the power to enforce it?

Mr. BIDDLE. I cannot conceive that it would. I think I see the drift of your question, and that is: Would Congress have intended that all disputes could be settled by the Board and then that a great segment of industry, 15,000,000 I think Mr. Davis said, should be unenforceable under those orders? I think clearly not.

Mr. CLARK. I meant a little more than that. I am raising the question as to whether Congress could possibly have intended to set up this Board with this great personnel, great consumption of time, and handle, as I understand, 6,700 cases, without having intended that in some way or by some right this ultimate order should be enforceable.

Mr. BIDDLE. I agree with you. It could not have intended that.

Mr. CLARK. Now, if it is conceivable that Congress deliberately took the enforcement of these orders out of the hands of the courts, then what other possible way is there for their enforcement, other than the Chief Executive?

Mr. BIDDLE. There is none.

Now, let me add, Mr. Clark, that although the War Labor Board's orders cannot be reviewed by the court, as I said, repeatedly, the seizure by the President can always be reviewed by the court.

Mr. CLARK. Now, getting right down to that, this proposition that if it is true that the courts cannot enforce these orders—I think that was clearly indicated—you cannot go into court on one of these orders, the employer, the employee, or the President, it cannot be litigated, if that is true then they cannot be enforced, unless they are enforced by the President.

Mr. BIDDLE. Yes.

Mr. CLARK. And if enforced by the President, how could he proceed otherwise than he did proceed in this case? Is there any other way he could proceed than by seizure?

Mr. BIDDLE. There is no other way. Moreover, the statute says "shall immediately seize."

Mr. CLARK. That is in section 3. I am speaking of section 7.

Mr. BIDDLE. Under section 7 there is no way at all. That is perfectly clear, I think. I haven't read all the legislative history, but you remember Senator Connally's answer to Senator Thomas: Senator

Thomas, knowing labor conditions, was opposed to court review. He asked Senator Connally whether there was any court review, and Senator Connally, speaking to Senator Thomas, Senator Austin, and others, said specifically, "No, I assure you this will not get the labor disputes into the courts. That is one thing we want to avoid." That is perfectly clear, I think.

Mr. CLARK. Now, of course, when the Labor Board took up this case it entered an order on the 18th of January 1944, in which, as you have already suggested, it provided for maintaining the status quo, it provided for elections in 30 days, and so forth, which, as the record shows, Montgomery Ward declined to comply with. Now, if it be conceded that it thereupon became the duty of the Chief Executive to do something about it, you say he had on recourse to the courts and he could not do anything but go out and seize the property.

Mr. BIDDLE. No; I do not say that. I would like to have my statements recorded as accurately as possible.

Mr. CLARK. I did not intend to put anything in your mouth, Mr. Biddle.

Mr. BIDDLE. I said his duty under the statute was to seize the property. That is what he was told to do by the statute. Now, the question was whether or not a court of equity would have given the Government adequate relief to get possession of the property. I said there were two things involved. First, I said it was his duty, under the whole structure of the act, not to go into the court but to seize the property; and, secondly, I said that until there was a real interference a court of equity would hardly see any reason to help the Government, with all its power to take and its direction under the statute to take. The court would say, "Well, why don't you go in and take it? Why do you need us?"

Mr. CLARK. The point I was discussing here, I was laying the provisions of section 3 aside and I was referring to section 7, in which there is no direction to seize.

Mr. BIDDLE. Under section 7 the Government could not have asked a court of equity to do anything. That is clear.

Mr. CLARK. Now, then, that order, or any order of the Board that is contested, there is no governmental agency or power to enforce it other than the power you possess through the President.

Mr. BIDDLE. That is right.

Mr. CLARK. And he, under the provisions of section 7, could not go into court to effect that enforcement?

Mr. BIDDLE. No.

Mr. CLARK. The only thing he could do was to take physical possession of the property.

Mr. BIDDLE. That is right.

Mr. CLARK. The thing that has caused some alarm in the minds of the people of the country, as some people indicate, is the question of why use soldiers. If the only way to enforce what Congress put into section 7 was to take possession, was there any way he could have done it short of using the Army in this case?

Mr. BIDDLE. I think that depends on the resistance. I do not think it is a question of what he could have done, it is a question of what it was wise to do. Every other plant had been taken—practically every other plant—by the Army and Navy sending their men in, and as the result of that show that the Government was in earnest in taking over

the plant, there had never been any resistance when the armed forces went in. We expected, when the armed forces went in there would be no such show of resistance.

Moreover, if there was any resistance I would far rather have the Army, disciplined as they are, deal with any resistance—and we did not know what it would be—than the United States marshals.

Mr. CLARK. Was there any way in this particular case to avoid the use of the Army?

Mr. BIDDLE. I did not see any. I do not quite know what you have in mind.

Mr. CLARK. Well, I have this in mind: When this particular case was certified to the Chief Executive by the War Labor Board they virtually said to him: "Here is the situation: We have entered our order and we are at the end of our rope, so far as the provisions of section 7 are concerned." Now, according to your opinion, with which I agree, it became the duty of the President to take over the situation and do something about it. Either back away from it entirely, or to go on through with it and do something. Now, in doing that, could he have done otherwise than use the Army in this particular *Montgomery Ward case*? That is what I mean.

Mr. BIDDLE. Marshals were sent down, and Mr. Avery refused to recognize the position of the marshals. Marshals are used for serving writs; they are court officers, and I suppose technically we could have ordered the marshals to take over the plant. Realistically speaking, I think that would not have been the appropriate thing to do. As Congress knew, in every one of these cases before the statute was passed the President had used the armed forces, and the Congress had approved the Executive order and therefore presumably approved the action taken under the Executive order before the statute was passed. So it seems to me that Congress substantially directed the President to take immediate possession. They knew he always did take possession in this way, and that was the appropriate thing for him to do. As Commander in Chief, to prevent strikes in the war period, he was sending his soldiers in to take over the plant.

Mr. CLARK. Well, now, if the President, through the Secretary of Commerce or someone else, had requested the marshals to take over the plant they could not have been invested with any civil authority to do that?

Mr. BIDDLE. The marshals?

Mr. CLARK. Yes.

Mr. BIDDLE. No.

Mr. CLARK. They really and technically would not have been subject to the orders of the President, would they?

Mr. BIDDLE. The marshals are appointed by the President, but the marshals are appointed as civil officers to carry out certain functions.

Mr. CLARK. Is it your judgment if that course had been pursued there would have been a great likelihood of disorder or some untoward incident, rather than by the use of the Army?

Mr. BIDDLE. That is what I am afraid of. I, having been United States attorney, know the way marshals act. I would not trust the marshals to take over a plant personally. I think it would have been a very doubtful procedure. You see, a marshal, after all, is an officer

of the court. Here the President is acting as Commander in Chief. Now, it is perfectly appropriate when, for instance, illegal acts occur, for the marshals to enforce the law in the plant. That is a different matter than taking possession under the statute.

Mr. CLARK. Well, would, in your opinion, the owner of the property who shows a disposition to resist the President's authority to take over the plant be more likely to resist the marshals or the Army?

Mr. BIDDLE. Coming to Mr. Avery, I think Mr. Avery just waited until the soldiers took him out. I think they removed him much more quietly and much more sensibly than the marshals would have.

Mr. CLARK. And made a better picture for him.

Mr. BIDDLE. And made a better picture for him, which is, of course, what he wanted. That is perfectly all right. We gave him his picture.

Mr. CLARK. That is all the questions I have at the moment.

The CHAIRMAN. Mr. Dewey.

Mr. DEWEY. Mr. Biddle, in your statement, in your conclusions you submitted certain ideas which I think are possibly the basis of this congressional investigation, and that is to ascertain the powers of the President to seize properties even in wartime or the Congress to enact legislation for the seizure of properties; in other words, to clarify just what is the law.

Mr. BIDDLE. Exactly.

Mr. DEWEY. I note there seems to be doubt in your own mind, because in your summary you state, or in your conclusion you state:

If changes are to be made, there are two points that I respectfully submit require careful consideration. In the first place, no statute designed to deal with wartime labor disputes should depend for its application on technical distinctions between manufacture and production, on the one hand, and other essential economic operations and services, on the other.

Now, to me that is the whole milk in the coconut on this matter that is before us. You, the War Labor Board, and various other agencies maintain that a mail-order house is a war-production effort and that "production" is synonymous with selling retail merchandise over the counter and by mail.

Now, I will leave that point just for a moment, as that is what we are really searching for. But I note on page 2 of your statement that you combine all labor disputes which may lead to substantial interference with the war effort. You underline "all." Well, naturally, that is correct. That is our understanding, I think, of the act, but there again we have probably different points of view as to whether this particular case, and other cases that might arise out of it, do lead to a substantial interference with the war effort.

Mr. BIDDLE. May I interrupt you a moment, Mr. Dewey?

Mr. DEWEY. Yes, sir.

Mr. BIDDLE. I take it then, that you are in agreement with my interpretation of section 7, that the Board had jurisdiction over all labor disputes. I wanted to be sure that I understood you.

Mr. DEWEY. I think there is no doubt in our minds that the Smith-Connally Act provides for the taking over of plants where there is actually war production being carried on.

Mr. BIDDLE. You mistake me, Mr. Dewey. I asked you whether your view, so I can understand your question, was that section 7 gave the War Labor Board power to settle disputes in all industry and not merely plants that produce directly for the war effort.

Mr. DEWEY. That is where you and I differ a little bit, or at least my interpretation differs from yours. They must substantially interfere with the war effort.

Mr. BIDDLE. You are speaking of section 7, Mr. Dewey?

Mr. DEWEY. Wherever it appears, there must be a substantial interference with the war effort.

Mr. BIDDLE. Interference, I agree.

Mr. DEWEY. Now, on page 3, in the Background of the Montgomery Ward Case, you say:

Montgomery Ward & Co. had been involved in approximately 20 dispute cases before the National War Labor Board.

Then, skipping a couple of lines, you say:

In fact, Montgomery Ward & Co. had publicly taken the position that it was not bound by, and would not comply with, the no-strike and no-lock-out pledge that had been given by labor and industry to the President on December 17, 1941.

Now, of course an industry cannot strike. It might lock out. Has Montgomery Ward & Co. locked out in any case that you know of since 1941?

Mr. BIDDLE. I do not know the details of the cases.

Mr. DEWEY. You made the statement that it had.

Mr. BIDDLE. I was referring to the statement of the company that they were not bound by the no-strike, no-lock-out agreement. I was not referring to whether they locked out, I was referring to the fact they would not abide by the national agreement.

Mr. DEWEY. You said that—

Montgomery Ward & Co. had been involved in approximately 20 dispute cases before the National War Labor Board—

and in the same paragraph—

In fact, Montgomery Ward & Co., had publicly taken the position that it was not bound by, and would not comply with, the no-strike and no-lock-out pledge.

Mr. BIDDLE. That is right.

Mr. DEWEY. I just wanted to straighten that out for the record that no matter what may be their position they have not locked out.

Mr. BIDDLE. That is clear. I do not think that I stated that they had.

Mr. DEWEY. I just wanted to straighten that out, because it might be inferred that they had.

Mr. BIDDLE. Yes; that is quite right.

Mr. DEWEY. Now, in Mr. Davis' testimony 2 days ago he stated that in various cases he had not complied with the provisions of the Smith-Connally Act as noted in section 8 subparagraph (2), which states:

For not less than thirty days after any notice under paragraph 1 is given, the contractor and his employees shall continue production under all the conditions which prevailed when such disputes arose, except as they may be modified by mutual agreement or by decision of the National War Labor Board.

Now, that, as I recall it, was one of the outstanding points of the Smith-Connally bill, that there should be a 30-day cooling-off period. Mr. Davis stated that he had not enforced that in the *Montgomery Ward case*. In other words, is there any dereliction of duty on the part of the Board in not complying with the provisions of the Smith-Connally Act?

Mr. BIDDLE. I would like to have Mr. Davis' statement. I am not quite sure what he said. Do you have the record?

Mr. DEWEY. It is contained in his statement. I naturally do not quote him verbatim. The statement consisted of 23 closely written pages. I have it before me. His statement is that because the company had disobeyed the act he did not care to order the men back to work.

Mr. BIDDLE. I am not quite sure what you mean. You mean in the *Montgomery Ward case*?

Mr. DEWEY. Yes.

Mr. BIDDLE. In the *Montgomery Ward case* the men went out and struck, and I think Mr. Davis said he of course did not order them back to work when the strike was caused by the noncompliance of the employer. Is that what you mean?

Mr. DEWEY. That is right. That is what Mr. Davis said.

Mr. BIDDLE. Yes.

Mr. DEWEY. It seems to me that when the Congress writes statutes the provisions should be carried out.

Mr. BIDDLE. I see what you mean.

Mr. DEWEY. Not left to the discretion of the Board.

Mr. BIDDLE. Let us see what Mr. Davis should have done that he did not do. I take it from what you said you think he ought to have certified to the President to take over the plant quicker than he did. Was that the conclusion? Because that is the only thing he could have done.

Mr. DEWEY. That there was no notice of strike given and no 30-day cooling-off period.

Mr. BIDDLE. I was trying to get at Mr. Davis' responsibility.

Mr. DEWEY. I think Mr. Davis should have obeyed the law.

Mr. BIDDLE. What should he have done? The only thing Mr. Davis could have done was to certify this question even more quickly, or this dispute even more quickly, to the President and asked the President to take over the plant immediately, because these men had been out because the company would not comply. Now, I take it that there is always a certain leeway given to the War Labor Board to try to win compliance. The telegram was sent. You hesitate to take over a plant with that great war power. I think the judgment used in not taking the plant over immediately, as you seem to suggest, was a wise one, nor do I think it was illegal.

Mr. DEWEY. Does that imply, probably, that there was some doubt in Mr. Davis' mind as to the status of this plant as being a war manufacturing plant, because that provision only applies to plants in war production?

Mr. BIDDLE. That decision was not for Mr. Davis, Mr. Dewey, it was for me. When the case was brought to me, I gave the opinion.

No; I think what it implies is that Mr. Davis was cautious in asserting this great power of seizure and wanted to exhaust every other possibility to try to get Mr. Avery to comply by sending the President's telegram, which did result in immediate compliance of the union, and then it was necessary, when Montgomery Ward would not comply, to take action.

The CHAIRMAN. Will the gentleman from Illinois yield?

Mr. DEWEY. Yes, of course.

The CHAIRMAN. I would like to point out I do not see anything in the War Labor Disputes Act which requires the Board to order the strikers back.

Mr. BIDDLE. I am sorry, but I did not hear.

The CHAIRMAN. I say, I do not see anything in the War Labor Disputes Act that directs the Board to order the strikers back in this case. If it is in there, I would like to have it pointed out.

Mr. DEWEY. Well, it has been my interpretation at least and it seems to be substantiated by some of the drafters and our colleagues who have worked on this bill, that that section 8 (2) means exactly that thing in connection with a war plant. It does not mean when a plant is not in war production.

Mr. BIDDLE. Mr. Dewey, let me add, the only thing Mr. Davis could do was to certify to the President. He had no way of enforcing his order. Now, you ask me why he did not certify immediately. I said a man should be cautious in certifying these seizures. There is no other thing he could do.

Mr. DEWEY. Now, I would like to step along covering the same general subject as to the category in which Montgomery Ward & Co. falls as a business. It probably has not been brought to your attention, but on April 15, the regional war labor board for the sixth region, which covers Chicago and a number of States adjoining the State of Illinois, including Minnesota, refused jurisdiction on a labor disturbance in Sears, Roebuck.

Mr. BIDDLE. Yes, I am familiar with that.

Mr. DEWEY. You are familiar with that?

Mr. BIDDLE. Yes.

Mr. DEWEY. You are also familiar with a paragraph of the majority opinion of that regional board which reads as follows:

The Board's majority found the answer to that question in part in the Garrison memo of May 27, 1943, section D, in which it appears that the Board will not ordinarily place its order on top of a National Labor Relations Board order. It will only do so if that course appears necessary in order to prevent a serious interference with the effective prosecution of the war.

Now, it goes on and reiterates that same statement in the balance of the paragraph, but here the regional labor board used jurisdiction on a labor disturbance occurring in another similar type of industry, and as you state in your opinion addressed to the President on April 22:

In fiscal year 1943, the company's—
that is, Montgomery Ward & Co.—

gross sales amounted to \$634,276,000, and that they have a total number of retail stores in excess of 600.

I just looked up to see what the gross sales of Sears, Roebuck were during the fiscal year 1943, and the gross sales of that company were \$876,038,037, and that they have 596 retail stores, or four less than those mentioned for Montgomery Ward & Co.

I only bring that matter into the case to again show that there is some doubt even in the War Labor Board itself as to whether Montgomery Ward & Co. is a manufacturing establishment or a production establishment necessary for the war business. In the one case they evidently did not find that it was necessary, and in the other case it was found that it was necessary.

Mr. BIDDLE. May I take that in the form of a question and answer it, Mr. Congressman?

Mr. DEWEY. Yes.

Mr. BIDDLE. We did not take over Montgomery Ward because they did a business of \$600,000,000 a year; we took over Montgomery Ward because of its long history of labor disputes which spread so that the truckers were refusing deliveries and refusing pick-ups, and resolutions were coming from other unions threatening a very serious labor situation.

Mr. DEWEY. May I just interrupt there one moment, please, Mr. Attorney General?

At the time the opinion was written those truckers had gone back to work.

Mr. BIDDLE. They had, but they refused to cross the picket line; they went back afterwards.

To finish what I was saying, in other words, the question is the seriousness of the strike and how it may spread, that and the fact that the statute says specifically in section 7 (a), "In making any such decision the Board shall conform to the provisions of the Fair Labor Standards Act and the National Labor Relations Act," and they decided in the *Sears case* that this was a judgment of the National Labor Relations Board, reserving, of course, that great emergency power which might be called into effect, and deciding that was not a case apparently, which threatened the situation as seriously as did this case. In other words, simply because both companies are large companies does not mean you have to take them both over.

Mr. DEWEY. That is, of course, true. Of course, I am not a lawyer, but as far as my civil study of this matter goes, and your brief, as far as that is concerned, there is a great deal of stress laid by you, not only in this statement but in your brief, that production and merchandising are one and the same thing, and there is an attempt to draw practically every type of company under the War Labor Disputes Act, and I agree that that is one of the things that should be clarified and not left in the open.

Mr. BIDDLE. My argument is not that production and manufacturing is the same thing by any means, my argument is where both words are used in the act; but by using "manufacturing" and "production," Congress could hardly have meant that section 3 should be confined to manufacturing where it also used the word "production," which is given a broad scope in every other section of the act.

Mr. DEWEY. I think, and I hope, out of this investigation there will be some constructive steps taken in our representation or report to the Congress.

Now, in order not to take too much of my colleague's time I will just go to one last point, which is more or less one question, probably followed by a little statement of my own. I am reading now from Mr. Davis' statement in answer to Mr. Elston. Mr. Elston queried him.

Mr. BIDDLE. What page is that on?

Mr. DEWEY. This is on page 106 of Mr. Davis' statement. It is about the third or fourth query.

Mr. BIDDLE. Yes, sir.

Mr. DEWEY (reading):

Mr. ELSTON. Didn't you say to Congress that you didn't want any authority to enforce the powers you already had?

Mr. DAVIS. I don't know, Mr. Elston, whether you understand your own question or not, frankly. What I am saying to you is: We don't want any duty or power to enforce our own orders at all. We want to hand that over to the cop. We cannot be a successful tripartite agency if we are our own policemen. That doesn't mean that I don't think our orders should be enforced by anyone.

Now, my question is: Are you the policeman? Are you the cop?

Mr. BIDDLE. No; I am not a cop; I am just a lawyer.

Mr. DEWEY. But apparently there is the search for a cop. If a cop is not in the Attorney General's office, then where do you think he might be? Who is the cop?

Mr. BIDDLE. That depends on the particular case.

You mean, who enforces these seizures?

Mr. DEWEY. I am very much in the dark in this regard, myself, but Mr. Davis claims to have no authority and wants a cop. Who is the cop?

Mr. BIDDLE. Well, it is very clear to me who enforces them. If by the word "cop," you mean what person has the Congress chosen to enforce these orders, it is the President, as you have said. So, it is clear to me that the President is the man who enforces the orders.

Mr. DEWEY. You think in this reference it refers to the Chief Executive?

Mr. BIDDLE. That section 3 refers to the Chief Executive.

Mr. DEWEY. No. I am trying to find out what Mr. Davis meant. He is chairman of the Board. He said he had no authority.

Mr. BIDDLE. I think you will have to ask Mr. Davis what he means by the word "cop." I just do not know.

Mr. DEWEY. You gave an opinion to Mr. Davis later for his procedure and I thought probably I could obtain some information from you as to the interpretation of the word "cop."

Mr. BIDDLE. I am sorry.

Mr. DEWEY. Well, we will leave that word "cop." But there is no doubt about it that there are many agencies, some conflicting with one another, are there not?

Mr. BIDDLE. In what field?

Mr. DEWEY. In the labor-management field. Now, let us enumerate just a few that I know. We have the Conciliation Service of the Labor Department.

Mr. BIDDLE. That does conciliation.

Mr. DEWEY. Yes.

Then, we have the National Labor Relations Board.

Mr. BIDDLE. That functions under your statute.

Mr. DEWEY. Then, we have the War Labor Board.

Mr. BIDDLE. That functions also under your statute.

Mr. DEWEY. Now, we have Judge Vinson, Director of War Stabilization, I think, or National Stabilization—I have forgotten the exact title, but by a directive he may appear with sanctions. Then, we have your own department. That is five. Then, I think that probably the War Manpower Act under Mr. Paul McNutt has something to say about it, and I am very sure we all know that General Hershey, under the Selective Service Act, has something to say about it. Then, I understand that in the War Department they have a conciliation service, and a similar one in the Navy Department.

The only thing that is surprising to me is how these good workmen that have really done a splendid job, and how these splendid industries that have produced more material out of this country than prob-

ably all the rest of the belligerents together, how they have been able to keep going under the jurisdiction of 9 or 10 bureaus or agencies, each one having to do with the relationship between management and labor.

I am going to ask the chairman of the committee, in due course, to call as a witness the director of the Bureau of the Budget. The matter of budgeting is not of great importance, apparently, in these days, but he is, I believe, coordinator of laws, agencies and bureaus, and I would like to have him report on just how many agencies are working in the relationship between labor and management, if there is a conflict. I hope that there again this committee might make a report to the Congress with the view of centralization and clarification. [See Appendix.]

Mr. BIDDLE. I think that is a most admirable suggestion, Mr. Dewey. I am very glad to concur in what you said about the efforts of American war workers. I think one reason for the lack of litigation and lack of strikes is due essentially to the way the War Labor Board has handled these disputes.

The CHAIRMAN. Mr. Byrne.

Mr. BYRNE. Mr. Attorney General, I would like a little elaboration on that part of your statement in title III, The Practical Problem in the Ward Case.

Mr. BIDDLE. What page?

Mr. BYRNE. Page 6, title III, The Practical Problem in the Ward Case.

Mr. BIDDLE. Yes, sir.

Mr. BYRNE. You said about the middle of the page:

More specifically I ask the committee to consider whether, in view of the present state of our food program, anyone should view with indifference any disruption whatsoever of the distribution of farm equipment.

Now, let us get the importance of that in your mind as to Montgomery & Ward. I am speaking now of its magnitude, size, and importance to the war effort.

Mr. BIDDLE. Mr. Byrne, all I can say is I cannot think of this war as anything but total war and total economy. Certainly, if farm machinery does not get to the farmers they do not get out the food, and that does effect the forces abroad. It seems to me a self-evident proposition, and I cannot emphatically enough say to this committee that this must be a broad interpretation. If we try to take one part of the industry as a whole and say, "Gentlemen, you can strike all you want"; and to another industry, "You must not strike," I do not think that is a total war effort, and therefore it seems to me not inappropriate to point out that where the company did distribute this farm machinery it affected the farmers, which in turn affected the war. You have to take this thing as a whole, as a unit.

Mr. BYRNE. Now, what do you think, General, about the fact that certain auxiliary departments of Montgomery Ward, like Hummer, were manufacturing very essential war materials? Does that enter into your thoughts regarding the necessity of taking over this plant?

Mr. BIDDLE. Not technically, but in the broad picture, yes. They have four manufacturing plants. They are not a manufacturing establishment per se, but they have four divisions, and they do some manufacturing. I do not want to exaggerate that, to be perfectly fair to the committee, I think it is a small part of the great picture. The

essence of the picture is the whole thing together—this great distributing organization, and it was that essentially, of course—it was a distributing organization, with certain manufacturing appendages, if you want to call it that, and a very serious labor conflict coming on. I do not want to emphasize that.

Mr. BYRNE. General, don't you really want to emphasize the fact that 78,000 employees enter into this picture?

Mr. BIDDLE. I do.

Mr. BYRNE. Don't you want to emphasize the fact that the Montgomery Ward people contribute to the pleasure, welfare, and necessities of upward of 30,000,000 of our 130,000,000 population?

Mr. BIDDLE. Yes; I think that is true.

Mr. BYRNE. Does not that enter into it very largely?

Mr. BIDDLE. Yes; and I did try to state that.

Mr. BYRNE. In other words, it is not a corner grocery store or a corner drug store, is it?

Mr. BIDDLE. Of course it is not.

Mr. BYRNE. That is self-evident, isn't it?

Mr. BIDDLE. That is self-evident. Every day we are requisitioning farms for artillery ranges. That is not the problem. The problem is whether or not we are going to have strikes in this country while the war is going on.

Mr. BYRNE. Near the bottom of page 6, I read the following statement:

Certainly, any man who wishes to view this branch of the issue dispassionately must ask himself this question: Suppose in the *Ward case* it was the union rather than the company which defied the order of the War Labor Board and, resorting to its economic power, maintained a recalcitrant strike. Suppose the company rather than the union was the petitioner for relief and that the War Labor Board, in maintenance of its authority and in aid of the company and its customers had recommended in this case, as it has in others, that the President take possession of the plant. Assume that on that record the President had acted and that the criminal provisions of the act were now invoked against the union. Would anyone question the President's authority to take the plant?

What you kindly elaborate on that a little, please?

Mr. BIDDLE. I thought that illustration sharply presented this problem. Let us assume there was a strike throughout all the Montgomery Ward distribution system and throughout its factories, tying up this great service organization which was servicing the country with machinery and other things, would the Congress or the people say, "No, Mr. President; you must let this strike spread in this great organization; let it spread everywhere"? I think not. It seems to me that simply sharpened the issue, because if the seizure is fair on one side it certainly is fair on the other side also.

Mr. BYRNE. That is a satisfactory answer, General, to me.

Now, General, on page 8 of your statement, at about the middle of the page there appears this:

As to points (1) and (3), there seemed to be no room for argument. Certainly the properties of Montgomery Ward in Chicago were plants or facilities, and in fact the company has never argued otherwise. Certainly, these plants and facilities dealt in articles or materials which might be required for the war effort or which might be useful in connection therewith. Farm machinery and supplies, electrical supplies and essential goods of that description are clearly useful in connection with the war effort. That is why the War Production Board gives priorities for their manufacture and distribution. In fact, that is why the War Production Board had actually given Montgomery Ward & Co. priorities and preference ratings for goods of this kind.

You are aware that there has been much criticism of your conduct and the President's conduct in this matter because of the fact that Montgomery Ward has assumed not to have been a part of the war effort at all; is that a fact?

Mr. BIDDLE. I think it is fair to say that I am aware of that.

Mr. BYRNE. I thought perhaps I might bring to your mind something you had forgotten. Don't you believe that statement strictly and fully tells the truth regarding the attitude of Montgomery Ward as being what amounts to practically a production plant?

Mr. BIDDLE. My recollection is, in answer to that, Mr. Byrne, that there were 25,000 applications for priorities.

Mr. BYRNE. That is what I want. Let us see, if you have the record there, how many of those priorities have to do with essential war involvements.

Mr. BIDDLE. I will read from an application of the company to the O. D. T., Mr. Byrne.

Mr. BYRNE. Yes; thank you.

Mr. BIDDLE (reading):

This company is engaged in business considered as essential civilian activity and supporting the war effort because it makes available to the general public throughout the country a great variety of merchandise essential to its daily life and directly related to the national health, safety, happiness, and general welfare.

It was signed by the company.

Mr. BYRNE. Yes. You say the total number of priorities amounted to 25,000?

Mr. BIDDLE. That is my recollection.

Mr. DEWEY. While we are going back to the size and priorities, I again wish to call attention to the fact that the sales of Sears, Roebuck, gross sales, were \$275,000,000 greater than those of Montgomery Ward in the same period. Probably, the Attorney General would be glad to put into the record how many preference ratings and priorities they received for the general health, welfare, and well-being of the public. I would like to have those put in at the same time, because this company was not considered as essential in the war effort by the sixth regional board.

Mr. BIDDLE. I beg your pardon, Mr. Dewey, I do not think there was any question of it being essential to the war effort. I would say Sears was definitely essential to the war effort, definitely.

Mr. DEWEY. You will admit that the sixth regional board did not find so, and refused jurisdiction?

Mr. BIDDLE. They said that one dispute was not of sufficient gravity to warrant the action of seizure.

Mr. DEWEY. Well, the whole case is one of fear that the Ward strike would extend all over the country. How do we know that the same fear should not present with an equally large company?

Mr. BIDDLE. It is a matter of judgment, Mr. Dewey, of judgment and the facts.

Mr. BYRNE. I have one or two other questions.

On page 17 of your statement, General, about near the middle of the page you make this statement:

Unless the civilian economy is to be dismissed as unimportant, or unless we are to assume that only part of the country and not all of it is at war, this was an emergency situation.

Would anyone have doubted it to be such had the situation been one in which the union was recalcitrant and the company's operations were suffering by reason of an unjustified strike?

I merely ask for a reiteration on that, so that anyone at large will understand your belief in the immediacy of this particular situation as being extremely dangerous to the economy of the whole Nation and the success of the war effort.

Mr. BIDDLE. I think that is the broad approach which I concur in.

Mr. BYRNE. I will defer further questions until later.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Mr. Biddle, I take it you share Mr. Davis' view that if the plant of the Montgomery Ward Co. was not seized it would result in the complete break-down of the labor policy of the Government.

Mr. BIDDLE. I think it might easily have done that, because, if this agreement cannot be enforced on one side, how can we hold the other side?

Mr. ELSTON. I think in your statement on page 18 you say that—

If the President had followed these counsels of timidity, he might have avoided criticism but he would have risked disaster.

Mr. BIDDLE. Yes.

Mr. ELSTON. Do you think disaster would have come if he had not seized the Montgomery Ward establishment in Chicago?

Mr. BIDDLE. I think there was every evidence that that might occur, because, as I have said, it is the risk. You cannot guarantee the result, but, as a matter of judgment, when you see this thing spreading which goes to the roots of the no-strike no-lock-out agreement, it goes to the very roots of that, and if you say to labor throughout the country, "We will not enforce the decision of the arbitration machinery that both sides agree on," the risk is very great.

Mr. ELSTON. Then you seized the plant in order to avoid this disaster?

Mr. BIDDLE. Yes.

Mr. ELSTON. Now, after you seized the plant what did you do in the plant?

Mr. BIDDLE. Well, we had an election, and we got out.

Mr. ELSTON. That is exactly what Montgomery Ward & Co. had been asking for since November of the year previous, isn't it?

Mr. BIDDLE. Oh, yes; but, in the first place, Montgomery Ward had no right to ask for an election at all to start with, nor had the War Labor Board any right to order an election, nor did they order an election. What they said to Montgomery Ward was—

Although this union has been certified twice as the union and although you recognized it once, and although the courts have said again and again that a union goes on as the representative of the employees until another election, nevertheless there is a big turn-over and we want to be as fair to you as possible, and therefore if you should hold the status quo and continue the contract only for a long enough time to have a fair election, and if the union applies for that election within 30 days, that is, just a 30-day matter, we will then enter this order.

and the company said—

No, we will not even go on with the status quo that existed all last year.

Mr. ELSTON. Then, the sole thing that was accomplished was an election?

Mr. BIDDLE. No, sir.

Mr. ELSTON. What else did you accomplish?

Mr. BIDDLE. We accomplished the thing that was basic in the whole situation, that the Government would enforce this agreement for no strike and no lock-out. That is the essence of this thing.

Mr. ELSTON. What did you enforce after you got control of the establishment?

Mr. BIDDLE. After we got control?

Mr. ELSTON. Yes.

Mr. BIDDLE. We did not enforce anything, we held it until the election could occur. They set up some grievance machinery for the men that Montgomery Ward had been firing in the meantime so as to break up the union.

Mr. ELSTON. Did you adjust any grievances?

Mr. BIDDLE. You will have to ask Mr. Taylor. I do not know whether he did or not. I know he took up some grievances.

Mr. ELSTON. Did you restore the check-off system?

Mr. BIDDLE. I do not think we restored any system. We continued the contract, and the contract provided for a maintenance of membership, if that is what you are referring to.

Mr. ELSTON. The contract is not even being continued now, is it?

Mr. BIDDLE. Negotiations are being continued, I understand, between Ward and the employees with respect to the various matters in controversy under the contract.

Mr. ELSTON. But there is no contract then at the present time?

Mr. BIDDLE. There is no contract nor did the Board order any contract.

Mr. ELSTON. The Board, however, did order that the contract be extended for 30 days?

Mr. BIDDLE. Until the election, that is right.

Mr. ELSTON. Did you accomplish that purpose by seizing the establishment in Chicago?

Mr. BIDDLE. Yes; the election was held.

Mr. ELSTON. The election has nothing to do with the extension of the contract for 30 days, has it?

Mr. BIDDLE. Well, the contract was extended because, while the Government was in possession, the contract was still in effect.

Mr. ELSTON. Well, the contract is not in effect now, is it?

Mr. BIDDLE. No; because the Government is out of possession.

Mr. ELSTON. Why did the Government come out of possession?

Mr. BIDDLE. The Government came out of possession, because all was done that could be done under the order of the War Labor Board. We do not go into possession just for fun, we go in to enforce the order. Do you think it would have been appropriate for the Government to stay in after the order had been accomplished?

Mr. ELSTON. If you are asking me, I would say it was not proper to go in at all.

Mr. BIDDLE. I understand that, but I asked if that were true it was not proper to continue possession after the order had been carried out. I cannot imagine anybody suggesting we should have stayed in after this had been accomplished.

Mr. ELSTON. Mr. Biddle, the point I am making is this: The only thing you really did accomplish was to secure this election.

Mr. BIDDLE. Precisely.

Mr. ELSTON. Now, then, don't you think there was a way to obtain that election without resorting to the drastic procedure that you did resort to in this case?

Mr. BIDDLE. I do not.

Mr. ELSTON. The union could have asked for the election, you say.

Mr. BIDDLE. The union did ask for the election.

Mr. ELSTON. Why was not it held then?

Mr. BIDDLE. It was held as soon as it could be held in an appropriate way. In other words, it was impossible to have a fair election while Montgomery Ward threw aside the old contract, threw aside the negotiations with the union. The union would have had no chance for a fair election under those circumstances, and so the Board held in its order. A fair election was held and the matter was determined.

Mr. ELSTON. What was there in the extension of the contract that would have guaranteed a fair election any more than an election without a contract in existence at all?

Mr. BIDDLE. Well, it was a recognition of the union and of all the provisions of the contract.

Mr. ELSTON. The very purpose of the election was to determine who was going to represent the employees, was it not?

Mr. BIDDLE. Certainly, and the fair thing was to continue the status quo until that could be determined. What the company wanted to do was to smash everything and when it was over then hold the election.

Mr. ELSTON. In other words, you wanted the company to recognize in advance of the election that the union represented the employees?

Mr. BIDDLE. No; we wanted the status quo to be continued until that point could be determined.

Mr. ELSTON. The status quo is not being continued now?

Mr. BIDDLE. It was continued until that point was determined, which was all the War Labor Board directed.

Mr. ELSTON. You mean to say you have no means at your disposal to enforce an election?

Mr. BIDDLE. Why, Senator, I do not do it. The National Labor Relations Board does, and did.

Mr. ELSTON. Not until after you seized the establishment.

Mr. BIDDLE. No, it was not done until after the establishment was seized under the order of the Board.

Mr. ELSTON. In your opinion, could it have been done before?

Mr. BIDDLE. I do not think a fair election could have been held at the company's demand without the possession of the plant. They wanted a fair election, and the company refused; and we went in, and the election was held and we got out.

Mr. ELSTON. What would prevent fairness?

Mr. BIDDLE. The company refused to negotiate with the union, to carry on the status quo. Men were being continually fired, and under those circumstances it was fair to hold the election while the status quo was continued, not to have the status quo thrown out of the window and then have the company hold an election on its own terms.

Mr. ELSTON. Whom were the people being fired by?

Mr. BIDDLE. The employees?

Mr. ELSTON. The employees?

Mr. BIDDLE. I cannot tell their names.

Mr. ELSTON. How many were fired?

Mr. BIDDLE. I think the figures were something like 400 or 500 employees had been fired in the last few months. You must remember the old contract expired on December 8 and that the company had been fighting this union for 3 months. It was not a matter of 3 days.

Mr. ELSTON. Well, the election could have been held at anytime, could not it? If the union was dissatisfied with the way the company was acting the union would have requested the election and the election could have been conducted under the National Labor Relations Act. Is not that the law?

Mr. BIDDLE. Of course, that is the law. The question is what would be the best way of holding a fair election all around? The Board said,

As long as the company repudiates the union, had been doing it for 3 months, keeps on firing the men, we do not think a fair election can be had, and the only way of holding a fair election and since the union has been certified, the company should go on as the law is recognizing it, until it is determined otherwise.

Mr. ELSTON. In other words, you seized the plant because of the union's insistence that it be done?

Mr. BIDDLE. No; we did not.

Mr. ELSTON. Well, you at least seized the establishment because of their insistence that a fair election could not be held unless you seized it?

Mr. BIDDLE. We did not.

Mr. ELSTON. Then, who was insisting that a fair election could not be held?

Mr. BIDDLE. The War Labor Board.

Mr. ELSTON. Did the War Labor Board act on its own motion or because the labor union had contended that that was a fact?

Mr. BIDDLE. After the public hearing before the War Labor Board—and there were several of them, they continued for 3 months—the War Labor Board ordered that the status quo would continue for 30 days if in that time the union asked for an election. I do not think the union wanted an election, they were sitting perfectly tight, they had been certified, they were the representatives of the employees. The War Labor Board was ordering the election because Montgomery Ward wanted it, and Montgomery Ward had no way under the statute of getting it. They said, "As there has been a good deal of turn-over in this plant, we think it is fair, though it is unusual, we think it is fair that the employer should have another crack at the election, to see who really represents the men, but that should only be done, that very unusual step, if the status quo continues so that a fair election be given to the men."

Mr. ELSTON. Now, you just made a statement that I am somewhat interested in. You said you did not think the union wanted an election. Where did you get such an impression as that?

Mr. BIDDLE. Why should they want the election?

They wanted to be recognized. They had been certified twice and recognized once by the company, and under the decisions of the courts where there is a certificate that continues until there is a new election.

Mr. ELSTON. In other words, they were willing to let things go along provided the contract would be extended.

Mr. BIDDLE. Sure.

Mr. ELSTON. Well, now, this was a written contract, was it not?

Mr. BIDDLE. Yes.

Mr. ELSTON. And it had a provision in it that it could be terminated at the end of the year?

Mr. BIDDLE. It was only for a year, as I remember, that is right, It is a year's contract.

Mr. ELSTON. The year expired on December 8?

Mr. BIDDLE. That is right.

Mr. ELSTON. Where is there any authority in the War Labor Board, or in any other governmental agency, to order any private enterprise in this country to continue a written contract when the contract provides it may be terminated by either party?

Mr. BIDDLE. The War Labor Board did not so order.

Mr. ELSTON. You said the War Labor Board ordered the company to continue its contract for an additional 30 days.

Mr. BIDDLE. That during the 30-day period it be held in status quo. They did not order that the contract should be signed. They said the same terms should continue as had been held in the contract until there was an election. Now, the War Labor Board's duty, as I understand it, is where there is a dispute to settle that dispute, and they settled that dispute in this manner.

Mr. ELSTON. Mr. Biddle, as a lawyer do you contend that any governmental agency has the power and authority to compel any business or any individual to continue—

Mr. BIDDLE (interposing). To sign a contract?

Mr. ELSTON (continuing). To continue a written contract for any period of time when the written terms of the contract permit its termination by either party?

Mr. BIDDLE. Let us look at the act and see if we can find anything there. I refer you to section 7 of the act.

Mr. ELSTON. Which act?

Mr. BIDDLE. The War Labor Disputes Act, section 7 of the act under subdivision (2):

Where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all circumstances of the case.

That is what they did here. They provided the terms and conditions. They were specifically given the right to do that. I do not think there is anything in the Constitution against that.

Mr. ELSTON. Do you think they had a right to continue a written contract?

Mr. BIDDLE. I did not say anything about continuing a written contract.

Mr. ELSTON. The terms of the written contract.

Mr. BIDDLE. They had the specific right to continue the terms and conditions. I do not see whether it is a written contract makes a bit of difference. The act says, "provide for terms and conditions." You mean if those terms and conditions were previously in a written contract the War Labor Board could not continue them?

Mr. ELSTON. When the company had the right to terminate the contract, you mean to say they had the power to continue that contract?

Mr. BIDDLE. It is your contention that the War Labor Board had no right to continue the terms and conditions of the written contract,

when they were specifically given authority to provide for terms and conditions between the parties?

Mr. ELSTON. If they could continue it for 30 days, they could continue it for 60 days.

Mr. BIDDLE. Of course, they could continue it indefinitely. That is what they are there for. They decide the conditions of employment. That is their job.

Mr. ELSTON. Then, what is the purpose of the company and the labor organization entering into any agreement if the War Labor Board has that power to make any kind of agreement that they want?

Mr. BIDDLE. They did not make the agreement. The only time when the War Labor Board enters into it is when there is a dispute. The question is, Mr. Elston: Do you want a peaceable arbitration or don't you? The War Labor Board is given the power to arbitrate during the war. That is what it amounts to it is given the arbitration procedure specifically under the act. If you do not think there should be peaceable arbitration, then don't put it in the act.

Mr. ELSTON. Well, certainly not to the extent of continuing contracts. Now, I want to refer to some other things in your statement before I ask you some general questions, just to be sure that we understand the statement.

Mr. BIDDLE. All right.

Mr. ELSTON. You referred to these disputes that Montgomery Ward & Co. had in the past, and you say there were about 20 of them.

Mr. BIDDLE. Twenty-two, to be exact.

Mr. ELSTON. Twenty-two of them. Were they all settled?

Mr. BIDDLE. No.

Mr. ELSTON. Were any of them pending at the time of this controversy?

Mr. BIDDLE. If I remember correctly, there were eight in which the Montgomery Ward & Co. had challenged the order of the Board and the rest of them were unsettled or had not reached that stage yet. There were eight in which the order of the Board had been specifically challenged.

Mr. ELSTON. Now, you make the statement:

In fact, Montgomery Ward & Co. had publicly taken the position that it was not bound by, and would not comply with, the no-strike and no-lock-out pledge that had been given by labor and industry to the President on December 17, 1941.

Did they ever lock out an employee?

Mr. BIDDLE. No.

Mr. ELSTON. Did any industry in this country, after that agreement was entered into, lock out any employee?

Mr. BIDDLE. I cannot answer that. I have no idea. There were 7,000 or 8,000 cases. You would have to ask Mr. Davis that.

Mr. ELSTON. Has any case come to your attention?

Mr. BIDDLE. No.

Mr. ELSTON. And they were not threatening to lock out the employees in this case, were they?

Mr. BIDDLE. No.

Mr. ELSTON. They were only insisting upon the election?

Mr. BIDDLE. And firing the employees.

Mr. ELSTON. Did they have the right to fire them or not?

Mr. BIDDLE. That depends on the particular case. They did not have the right to fire them for membership in the union. They have to take up each grievance separately.

Mr. ELSTON. That is not the kind of agreement they had, simply the maintenance of membership, is it? An employee could belong to the union or not belong to the union as he saw fit, is that not right?

Mr. BIDDLE. That is right, but that has nothing to do with whether or not the company had the right to fire an employee just because he was one of the leaders of the union.

Mr. ELSTON. When did the maintenance-of-membership provision of the contract expire?

Mr. BIDDLE. It expired with the expiration of the contract.

Mr. ELSTON. December 8, 1943?

Mr. BIDDLE. That is right.

Mr. ELSTON. Did they fire any employees who belonged to the union under the maintenance-of-membership provision of the contract before the contract expired?

Mr. BIDDLE. Do you mean did they fire them because of the maintenance-of-membership provision in the contract?

Mr. ELSTON. Any employees.

Mr. BIDDLE. Because of the maintenance-of-membership provision?

Mr. ELSTON. Any employees who belonged to the union.

Mr. BIDDLE. You said "maintenance of membership."

Mr. ELSTON. Under the maintenance-of-membership provision of the contract.

Mr. BIDDLE. No. On the contrary, as Mr. Davis, I think, has stated, the union never asked the company during the contract, and I think after that, to fire anyone on account of the maintenance of membership. In other words, the maintenance-of-membership provision was never asked to be enforced, even by the union.

Mr. ELSTON. There was not any claim that the company had not adhered strictly, or the union had not adhered strictly to the terms of the contract during the year it was in existence?

Mr. BIDDLE. I have not heard any.

Mr. ELSTON. They got along all right under the contract?

Mr. BIDDLE. You would have to ask them.

Mr. ELSTON. These discharges you are talking about, I do not know anything about them, but these discharges you are talking about, if they took place, they took place after the contract had expired?

Mr. BIDDLE. So I am informed.

Mr. ELSTON. Now, you were apprehensive, among other things, that some of the subsidiaries of Montgomery Ward & Co. might go on strike, including the Hummer Manufacturing Co.; is that right?

Mr. BIDDLE. That is right.

Mr. ELSTON. Well, now, they later did go on a strike, did they not?

Mr. BIDDLE. That is right.

Mr. ELSTON. And the Government seized the property?

Mr. BIDDLE. Yes.

Mr. ELSTON. As I think it had a perfect right to, because they were engaged in the manufacture of equipment for the Government. Now, you had that remedy at the time you seized the establishment in Chicago?

Mr. BIDDLE. What remedy?

Mr. ELSTON. You had the remedy to seize the Hummer Manufacturing Co. if they went out on strike?

Mr. BIDDLE. We did; we did seize it.

Mr. ELSTON. So, Mr. Biddle, you were not without a remedy so far as these subsidiary manufacturing companies were concerned, were you?

Mr. BIDDLE. No; quite the contrary.

Mr. ELSTON. Well, if you had that remedy and you knew you could exercise it, and you have exercised it, why was there any apprehension on your part?

Mr. BIDDLE. Well, it was spreading everywhere. The Hummer situation I think was largely the result of the Chicago situation. This is a very interesting thing: Mr. Smith, who argued the case for Montgomery Ward, objected in his written brief very strenuously to our assertion that Hummer was one of those plants that might cause trouble, that might cause the thing to spread. He said it is not fair to base a bill of complaint simply on a matter of opinion, and, as a matter of fact, there was no indication that Hummer would go out. It is an A. F. of L. plant, and this is a C. I. O. thing. The very day he was making those statements the Hummer men were going out.

Mr. ELSTON. You had your remedy at law against Hummer?

Mr. BIDDLE. Sure.

Mr. ELSTON. Now, in your statement on page 5 you say, "That the Board's belief was well founded," as shown by certain affidavits, and you are submitting copies of these affidavits to the committee.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON. Those affidavits were not in your possession when you seized the establishment in Chicago?

Mr. BIDDLE. No; because the bill was filed after the seizure and the affidavits were drawn up in support of the bill.

Mr. ELSTON. As a matter of fact, those affidavits were dated May 4 and 5.

Mr. BIDDLE. Yes; we had all the information, but the affidavits had not actually been drawn.

Mr. ELSTON. Now, you say the War Production Board had recognized the company's importance by granting it priority and preference ratings.

Now, what establishment in this country does not have to get priority and preference ratings as to certain types of equipment they want to sell?

Mr. BIDDLE. I think the whole theory of priorities is that materials covered by priorities are essential for the war, and wherever a company wants priorities they have to get them, of course. It is simply showing that Montgomery Ward & Co. did have something to do with the war effort.

Mr. ELSTON. Even if a man wants to build a chicken coop he has got to get a priority?

Mr. BIDDLE. Sure, but he does not usually get it. In other words, you have to show the chicken coop is essential to the war effort.

Mr. ELSTON. Yes. Well, now, on this matter of priorities, the President issued an Executive order some time ago, did he not?

Mr. BIDDLE. I dare say.

Mr. ELSTON. Stipulating that certain sanctions would be levied against companies which refused to comply with orders of the War Labor Board?

Mr. BIDDLE. Yes.

Mr. ELSTON. Are you familiar with the terms of that Executive order?

Mr. BIDDLE. Only in a general way. I know it was submitted to me, and I approved it.

Mr. ELSTON. It is Executive Order 9370, and it is dated August 16, 1943. Now, let me just read you a couple of paragraphs that are pertinent to this question.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON (reading):

In order to effectuate compliance with directive orders of the National War Labor Board in cases in which the Board reports to the Director of Economic Stabilization that its orders have not been complied with, the Director is authorized and directed, in furtherance of the effective prosecution of the war, to issue such directives as he may deem necessary (1) to other departments or agencies of the Government directing the taking of appropriate action relating to withholding or withdrawing from a noncomplying employer any priorities, benefits or privileges extended, or contracts entered into by executive action of the Government until the National War Labor Board has reported that compliance has been effectuated.

Now, you are familiar with the terms of that Executive order?

Mr. BIDDLE. Yes.

Mr. ELSTON. Did you ever give an opinion as to its constitutionality?

Mr. BIDDLE. Well, I approved the order, and that, of course, would not bar the constitutionality of the order.

Mr. ELSTON. So you consider it a legal and binding Executive order?

Mr. BIDDLE. Yes.

Mr. ELSTON. Can you tell us why the provisions of that Executive order were never invoked against Montgomery Ward & Co. instead of taking the drastic step you did take?

Mr. BIDDLE. I certainly can. Here was a threatened strike. The question was, What was the best way of preventing the strike? There were various ways. You very clearly pointed out we could have stopped their priorities. Possibly we could have stopped the mailing privileges, I do not know, but I think probably that could have been done. We could have done all kinds of things. In other words, we could have tried to freeze up the business of Montgomery Ward, but how in the world would that stop a strike? How would that help the war effort? Would you try to put Montgomery Ward out of business to further the war effort? Would you discharge men to further the war effort? Would you deny priorities to bring men back to work? The question was how to stop this strike.

Mr. ELSTON. Could not you make that contention with respect to any company against which this order might be invoked?

Mr. BIDDLE. I think that is usually true. I do not know of a case in which it was done. There might be. I think it is conceivable it might be used, but I do not know offhand of any case in which that has been done yet.

Mr. ELSTON. You say you could have taken the way of stopping mailing privileges. You did take that same step—

Mr. BIDDLE (interposing). No, sir; we did not.

Mr. ELSTON. I did not say you personally.

Mr. BIDDLE. The Post Office did not.

Mr. ELSTON. Just let me finish. Somebody took out of the Montgomery Ward establishment all of the Post Office employees who for a long period of time had worked in there to handle the mail as a convenience to the company and as a convenience to the Post Office Department, and you required the company to haul all of its orders clear downtown to the post office.

Mr. BIDDLE. May I answer that?

Mr. ELSTON. I wish you would.

Mr. BIDDLE. Thinking that question might be asked this morning, I had occasion to talk to the deputy postmaster about that particular situation. I understand he will appear before you tomorrow, so I hesitate to go into it in detail. The situation was simply this:

Under the arrangement with Montgomery Ward, the company sent its trucks up to the post office to get the mail. When the truckers refused to deliver some pick-ups, the Government, of course, did not allow its postal employees to sit around and do nothing, they took those employees out until there was something to do, and, when the employees of Montgomery Ward went back, the postal employees were sent back. There was no effort at any time by the Government to affect any of the arrangements with Montgomery Ward under which the Montgomery Ward trucks went up to get the mail at the post office. I think the deputy postmaster will illustrate that to you very clearly tomorrow. No privileges were withdrawn, the status quo remained just as it did before, but the men were not allowed to sit idle in a plant where they could not make deliveries for 3 or 4 days.

Mr. ELSTON. Since you are not familiar with the facts in the case, only by hearsay, we will ask the other witness about that.

Mr. BIDDLE. I think that is right.

Mr. ELSTON. Now I am interested in the statement you made on page 6.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON. You say,

If one employer could defy the orders of the War Labor Board and insist, during the war, on settling his labor disputes by economic warfare, then other employers could do likewise.

Did you understand because one company might defy an order that all the other companies in the United States might do the same thing?

Mr. BIDDLE. Yes. That process is gradual. First, one man, then another man, then a few more, and so on, until your machinery has broken down. Now I am somewhat familiar, Mr. Elston, if I may say so, with this Labor Disputes Act, having been chairman of the National Labor Relations Board for a year, or nearly a year, and I realize that where both sides are often suspicious of each other in these labor disputes, I realize that one side feels the other is not playing the game, or is not doing what it ought to do under the arbitration machinery, and the thing spreads like wildfire, it becomes a very dangerous situation. The minute either side distrusts the other side or believes the Government will not enforce the law, then the machinery becomes very wobbly at once.

Mr. ELSTON. Then you ask this pertinent question:

Suppose in the *Ward* case it was the union rather than the company which defied the order of the War Labor Board and, resorting to its economic power, maintained a recalcitrant strike?

Did any union ever defy the orders of the War Labor Board?

Mr. BIDDLE. Many of them have defied the orders. I thought Mr. Davis gave you those figures. My recollection is, in these seizure cases, that they run fairly evenly. There were slightly more seized for labor difficulties than for industry difficulties, perhaps 6 to 5, something like that. The very first seizure we had was the aircraft case, which I mentioned, in Los Angeles, where during the negotiations before the Board these fellows went out on a wildcat strike, while negotiations were going on. The Government said, "No, you go back to work." They did not go back to work, so the Government went and seized the plant and then the men went back to work.

Mr. ELSTON. John L. Lewis is another case?

Mr. BIDDLE. John L. Lewis is another good example.

Mr. ELSTON. Don't you have to assume if others are going to follow suit that they are going to violate the no-strike pledge, they are going to violate the pledge of no lock-out?

Mr. BIDDLE. That question was asked of Mr. Davis day before yesterday and I shall answer very much the way he did. We do have to assume that because that is what occurred. When one side finds the other is not sticking to it they go out.

Mr. ELSTON. Do you know of any particular cases in which any company has defied the War Labor Board solely because some other company defied it?

Mr. BIDDLE. No. You would have to ask Mr. Davis. I am not familiar with the specific cases.

Mr. ELSTON. All right; I will put it this way: Do you know of any case in which any labor organization has defied the War Labor Board solely because another labor organization defied it?

Mr. BIDDLE. I would rather you ask Mr. Davis. I am not familiar with the cases.

Mr. ELSTON. And you do not know of any company that has done that?

Mr. BIDDLE. No. I am not familiar with these cases.

Mr. ELSTON. And yet you make a statement here to that effect.

Mr. BIDDLE. Yes; based largely on Mr. Davis' statement, of course.

Mr. ELSTON. You assume that the thing would happen?

Mr. BIDDLE. Yes.

Mr. ELSTON. Yet you have no personal knowledge of it ever happening?

Mr. BIDDLE. All my knowledge in this case was brought to me by others, brought by Mr. Davis, brought by the War Labor Board. They gave me the affidavit, they talked about the seriousness of the case. I have no knowledge of labor disputes. I have to take the information from the men who Congress has said are to determine that.

Mr. ELSTON. When you made the statement did you have any cases brought to your attention?

Mr. BIDDLE. I do not remember any detailed cases. It was the general judgment of these gentlemen.

Mr. ELSTON. Now, on page 8 of your statement, you make the claim as to points (1) and (3), and points (1) and (3), adverting for a moment, are that the property must be a plant, mine, or facility.

Mr. BIDDLE. Yes.

Mr. ELSTON. And, second, it must be equipped for manufacture, production, or mining, and, third, it must be so equipped with respect to articles or materials which may be required for the war effort.

Mr. BIDDLE. Yes.

Mr. ELSTON. Or which may be usable in connection therewith.

Mr. BIDDLE. Yes.

Mr. ELSTON. You say:

As to points (1) and (3), there seemed to be no room for argument. Certainly the properties of Montgomery Ward in Chicago were plants or facilities, and in fact the company has never argued otherwise.

Now, you know that the company at all times has contended that it was not a plant, a mine, or a facility as described in section 3 of the War Labor Disputes Act, do you not?

Mr. BIDDLE. No. I think, Mr. Congressman, the company argued that this particular plant was not equipped for manufacture, production, or mining. That was their argument. They could not very well say it is not a facility. I do not think anybody could say that. It seems pretty obvious, I should think.

Mr. ELSTON. Well, the point (2) that you make is that the facility must be equipped for manufacture, production, or mining.

Mr. BIDDLE. That point (2) is the one in dispute, I admit that at once.

Mr. ELSTON. And that is what this company never for one moment admitted?

Mr. BIDDLE. That is the point they fight about, I agree with that.

Mr. ELSTON. They went to court about it?

Mr. BIDDLE. That is right.

Mr. ELSTON. At all times they claimed that they did not come within the purview of the provisions of section 3?

Mr. BIDDLE. As I say here, that is right.

Mr. ELSTON. You refer on page 9 to other examples of seizure and you refer to the seizure of the railroads during the First World War. Now, the railroads in the First World War were seized by reason of an act of Congress, were they not?

Mr. BIDDLE. I do not think I did. Would you read the sentence? Where are you reading from?

Mr. ELSTON (reading):

For example, the act of August 29, 1916, authorizes him to take possession of and to operate transportation systems.

Mr. BIDDLE. That is right.

Mr. ELSTON. Then you refer to the Communications Act of 1934.

Mr. BIDDLE. That is right.

Mr. ELSTON. Which authorizes him to take over radio facilities.

Mr. BIDDLE. Yes.

Mr. ELSTON. And wire communication systems.

Mr. BIDDLE. Yes.

Mr. ELSTON. So in those cases, Mr. Biddle, to which you point, where seizures have been made before, it was by act of Congress, was it not?

Mr. BIDDLE. Well, it depends on what seizures you cite. I say there are other acts giving the President the right to seize, but this is the general act involving labor disputes.

As to the seizures in the First World War, many of them were taken without any statute at all.

Mr. ELSTON. I grant you that.

Mr. BIDDLE. So President Wilson took *Smith & Wesson* in the last World War without any specific statute, and so the President took the railroads in the Civil War without a statute. That is the historical basis.

Mr. ELSTON. Right on that point, the seizures that have taken place so far during this war were plants, mines, or facilities which either had contracts with the Government or were manufacturing or producing something in the way of war material, is that not true?

Mr. BIDDLE. No. There was at least one in which that was not true. That is the Los Angeles water works, in February 1944.

Mr. ELSTON. Was the water that was being produced by the water works of that city being used by the Government?

Mr. BIDDLE. No, there were no prime contracts with the Government in that case.

Mr. ELSTON. Certainly the water plant served some companies that were manufacturing something for the Government.

Mr. BIDDLE. Yes. The act says nothing about that, of course.

Mr. ELSTON. So the Government had a direct interest?

Mr. BIDDLE. Sure.

Mr. ELSTON. In the maintenance of the water works.

Mr. BIDDLE. Yes. We never took anything that we did not think we had a pretty direct interest in.

Mr. ELSTON. With that possible exception—and I do not know that that is even an exception—there has not been a single seizure during this war except of plants or mines such as are described in section 3 of the War Labor Disputes Act?

Mr. BIDDLE. Yes, but you must remember, Mr. Congressman, as I said before, many of those seizures were made without any statute, so that the statute was irrelevant in those seizures that were made without the statute. Take the coal mines; the coal mines were seized without any statutory authority specifically.

Mr. ELSTON. I understand that and I do not question that that took place.

Mr. BIDDLE. Yes.

Mr. ELSTON. But Congress came right along shortly after the seizures took place and did enact legislation.

Mr. BIDDLE. That is right.

Mr. ELSTON. If Congress was not of the opinion that that legislation was necessary, Congress would not have enacted any legislation, would it?

Mr. BIDDLE. That is right, necessary or advisable. The reason I say that is that the legislative history clearly points out that Congress intended to preserve the President's constitutional powers to seize irrespective of the statute. I think that is very clear. When you say "necessary," I think perhaps "advisable or necessary" would be better.

Mr. ELSTON. The same thing was true in the First World War, that wherever there was a seizure it was either after Congress had passed a law authorizing it, or Congress immediately passed a law and authorized that sort of an act?

Mr. BIDDLE. Well, the one exception was the *Smith & Wesson* case which I spoke of a minute ago. There was a similar section under one of the statutes during that war to the original section 9 of which section 3 is an amendment. That did not, however, deal with labor

disputes. You will remember that section 9 did not deal with labor disputes but provided where a company would not give priority to a Government order the President would take over. That was largely drafted on a similar section in the other war. In this particular case, Smith & Wesson had a labor dispute and without even an Executive order, President Wilson took over the plant, organized a Government corporation to operate the plant, and operated the plant through the Government corporation for some period of time, and gave back the plant after paying compensation as awarded by the War Department.

Mr. ELSTON. In that case they were making firearms?

Mr. BIDDLE. That is right.

Mr. ELSTON. And in that case there was no court decision on the subject, was there?

Mr. BIDDLE. No; nobody went near a court, not even the company. They just assumed the President could do it during a war.

Mr. ELSTON. So the question was never litigated?

Mr. BIDDLE. That is right. The only litigated case which comes close to this at all is the case in Kentucky of May 9.

Mr. ELSTON. Mr. Biddle, getting down to your statement, on page 15 you say:

It is significant that in the debates and congressional discussions which preceded the passage of the War Labor Disputes Act, it was generally conceded that the President has this authority and that it had been lawfully exercised in the cases I have mentioned.

Mr. BIDDLE. Yes.

Mr. ELSTON. You say:

This is clear, as the committee will rememehr, in the case of the proceedings in this House.

Now, if Congress recognized that, can you give us any reason at all why there was any necessity for Congress to pass the War Labor Disputes Act?

Mr. BIDDLE. I think in all these cases the Congress is anxious, and so is the Executive, to rely upon specific statutory powers rather than general constitutional powers. I think it is most appropriate for the Congress to do it. There is an area, of course, where the extension of the constitutional power of the President may be in doubt, and during the war it is very important and most appropriate, it seems to me, for the Congress to pass statutes.

I am not at all certain—I do not think it has ever been decided—I am not at all certain that if Congress passed a statute in derogation of the President's constitutional powers that that would not be a valid statute. I say that for this reason—this is the point that I think has been very little discussed—for this reason, that the President's power is based on the emergency and the emergency has often passed before there is a statute in existence. Therefore, the same emergency would not exist where Congress had specifically expressed its will. But let me add, I am perfectly certain that the Government would of course be strictly guided by anything that Congress said it must do specifically.

Mr. ELSTON. Well, now, as a matter of fact you go on the assumption that the congressional debates indicate that the President had this authority.

Mr. BIDDLE. Yes.

Mr. ELSTON. Have you examined all of the congressional debates on the subject?

Mr. BIDDLE. I think my associates have examined most of them.

Mr. ELSTON. Well, I will refer to some of them a little bit later on, but don't you know that there was a considerable controversy, in the Senate in particular, as to the extent and scope of section 3?

Mr. BIDDLE. That is true. You spoke of the President's constitutional powers. Now, as to section 3, I think it is very clear, particularly in Senator Connally's statement, which doubtless you are referring to, that all of the members of the conference were not perfectly clear what section 3 provided. I think you will find it very hard, in most of these legislative histories, to read an absolutely clear decision on one side or the other.

Mr. ELSTON. Mr. Biddle, when there is any dispute or doubt about what a law means, you necessarily go to the congressional debates to find out what the intention of the law-making body was, do you not?

Mr. BIDDLE. That is one of the sources of information.

Mr. ELSTON. What is the other?

Mr. BIDDLE. The other sources are the administrative procedure preceding the debates in the passage of the act. Of course, the main source is the language of the act itself, taken together as a whole, that is the fundamental thing. You look first at the section, then you look at the broad act itself, then you look at the legislative history before the act, and then you see what the administrative action had been that is presumably ratified by the act of Congress. Those are the various sources of information to arrive at an interpretation.

Mr. ELSTON. Did not you notice in the congressional debates there was considerable doubt about what should be included in section 3?

Mr. BIDDLE. Yes.

Mr. ELSTON. And did not the discussion revolve around the use of the words "plants, mines, and facilities"?

Mr. BIDDLE. I think there was some discussion of that. If you will refer to the particular discussion, Congressman, there is a discussion on each side of it. I can give you, if you like, a synopsis of all the legislative proceeding.

Mr. ELSTON. Perhaps it is best if I call your attention to something specific.

Mr. BIDDLE. Yes.

Mr. ELSTON. Section 3, as you know, was a part of the original Connally bill.

Mr. BIDDLE. Yes.

Mr. ELSTON. To get a little history of the War Labor Disputes Act, the Senate originally passed what is known as the Connally Act. That is correct, is it not?

Mr. BIDDLE. Yes.

Mr. ELSTON. It came to the House, was referred to the House Military Affairs Committee, and that committee added a number of things that had not theretofore been included in the Connally Act. The Connally Act was limited almost entirely to plant seizures. That is correct, is it not?

Mr. BIDDLE. Yes.

Mr. ELSTON. It was the House that added section 7 which gives the War Labor Board some statutory authority.

Mr. BIDDLE. Yes.

Mr. ELSTON. And permitted the War Labor Board to subpoena witnesses before it.

Mr. BIDDLE. Yes.

Mr. ELSTON. And the reason for that was because at that time John L. Lewis would not appear before the War Labor Board and was defying its authority in that respect.

Mr. BIDDLE. The subpoena section.

Mr. ELSTON. The War Labor Board wanted to bring him before it in order that they could compel him to testify.

Mr. BIDDLE. Yes.

Mr. ELSTON. Now, I recite the history of those two parts of the law correctly, don't I?

Mr. BIDDLE. I think that is substantially correct.

The CHAIRMAN. I think the record ought to show here the House committee and the House, as I recall it, left out the plant-seizure section entirely.

Mr. ELSTON. I haven't gotten to that, Mr. Ramspeck. I think I know fairly well what happened because I was on the committee. When the House committee reported the bill to the House, they left the plant-seizures section out entirely.

Mr. BIDDLE. And put the criminal provisions in.

Mr. ELSTON. That is what I am getting to. Not the same criminal provisions that were in the Connally Act?

Mr. BIDDLE. No; the criminal provisions after possession.

Mr. ELSTON. Those were entirely new criminal provisions that the House added.

Mr. BIDDLE. Well, my point is, Mr. Elston, that they added a criminal provision which came into effect after possession, thus assuming that possession could be taken, although there was then no course for taking the possession.

Mr. ELSTON. I am afraid we would have to differ on that, because we find that the enforcement provision of the act, as reported by the Military Affairs Committee to the House and as the act passed the House, is section 6 of the old law, Senate 796, and that provided for certain penalties against representatives of labor organizations for violating the provisions of the law as passed by the House. There would be no reason to put criminal penalties in for doing things that the House had taken out of the law, would there?

Mr. BIDDLE. As I remember the debate in the House, particularly a statement of Congressman Voorhis, it was that you could not make it criminal to strike, and that you had to limit that to a strike against the Government's possession, and that was concurred in without question by the House Members; isn't that right?

Mr. ELSTON. Yes. As a matter of fact, Congress did not make it an absolute offense to strike, because Congress recognized that it had no right to do that.

Mr. BIDDLE. Yes; that is right.

Mr. ELSTON. Now, when section 3 was under debate in the Senate, I want to call your attention to this statement by Senator Connally, and it appears on page 3943 of the Congressional Record. I quote:

The powers which are provided for by the bill can not be exercised by the President until he makes that kind of a finding—

and that is the finding I will refer to a little later—

and the plant has to be one which is equipped and suitable for the production of national defense articles. The fear about making a wholesale attack on property, as suggested by the Senator from Ohio, has no foundation in fact. The seven

cases which were cited and to which the Senator from Connecticut has referred, were all cases in which either the Army or the Navy took over plants and within a very few days after they were taken over they were returned to their private owners.

Now, the apprehension expressed by Senator Taft was that the section might be construed to include all pieces of property if there was not something stated on the floor of the Senate to indicate to the contrary, and that brought about Senator Connally's statement which I have just read.

Mr. BIDDLE. There is no doubt of that. Now, may I interrupt for a moment, sir, to state something further in the debates?

Mr. ELSTON. Yes.

Mr. BIDDLE. So as to show there was definite disagreement on this, certainly in Senator Connally's mind, Representative Harness, who was one of the House majority Members, said this with respect to the scope of section 3:

Section 3 defines the powers of the President to take possession of the property.

This is the heart of the Senate bill.

This authority to seize extends quite comprehensively to any plant, mine or facility—

this is important—

any plant, mine, or facility which may be required for the war effort or which may be useful in connection therewith.

That is Congressman Harness' interpretation of this section.

Mr. ELSTON. May I interrupt right there? He is simply quoting the words of the statute.

Mr. BIDDLE. I know, but he is not quoting the plant engaged in production, manufacturing, or mining, he is going much further than that. Mr. Harness says:

extends quite comprehensively to any plant, mine, or facility which may be required for the war effort or which may be useful in connection therewith.

He does not say a plant engaged in manufacturing, he says "any plant."

Mr. ELSTON. Mr. Harness was not reading the whole act.

Mr. BIDDLE. Perhaps Senator Connally was not reading the whole act, I do not know. I think we ought to balance the whole thing here. Let us take Senator Pepper's statement.

Mr. ELSTON. Senator who?

Mr. BIDDLE. Senator Pepper. May I give you the reference to these pages? Mr. Harness' statement was on page 5782 of the Congressional Record of June 11, 1943. This is not in my statement. [See appendix.]

This is what Senator Pepper says on Congressional Record 5876:

Section 3 specifically confirms the power heretofore existing—

and that power had not been exercised only on plants engaged in manufacturing, by the War Labor Board—

and confers a new power to take over—

and these were his words—

any facility or operation which by the President may be deemed essential to the prosecution of the war.

You could not get it broader than that.

Mr. ELSTON. Senator Pepper was not the author of the act and Senator Connally was.

Let me call your attention to another statement, Mr. Biddle, which I think indicates congressional intent. Senator Reed proposed to extend the act to all the plants, mines, and facilities equipped for the manufacture of materials of war and offered an amendment so as to include, and I quote, "all plants engaged in an essential war industry during the state of war." The amendment was submitted by him in which the authority for seizure might extend to "any business establishment."

Now, those were the words of Senator Reed's amendment, "any business establishment, plant, mine, or facility." Now, that amendment was defeated in the Senate. Do you recall that?

Mr. BIDDLE. Yes. That was an amendment to section 6, not to section 3.

Mr. ELSTON. Well, that makes no difference.

Mr. BIDDLE. Oh, but that does make a difference. Don't you think, Mr. Elston, that it does?

Mr. ELSTON. Beg pardon?

Mr. BIDDLE. I mean, he was not speaking of section 3. Let us get this perfectly clear. He was speaking, as I remember, of section 6, and that is the criminal provision.

Mr. ELSTON. Let us read on and see what Senator Connally says about that, and then we will come back to section 6, if you contend that is what it was.

Mr. BIDDLE. Wasn't it that? That is my recollection.

Mr. ELSTON. I do not have the record here. I am just reading from my notes.

Now, Senator Connally made this statement, page 3867 of the Record:

I will say to the Senator that I would not favor the idea which he has advanced with reference to giving the proposed legislation—

and he is certainly referring to the whole act—

application to all plants. My theory is that after the Government has taken over a plant it becomes a Government plant just as though it were an arsenal or ship-building plant directed and operated by the Government.

Mr. BIDDLE. Section 6.

Mr. ELSTON (continuing):

We would therefore be authorized to say that this is a Government plant, that it is being operated by the Government, and that no one, whether a union man or anyone else, has any right to interfere with or induce anyone to abstain from working or to in any way impede or hinder the operation of the plant.

Mr. BIDDLE. It is perfectly clear section 6 applies to all kinds of plants; I agree entirely with that.

Mr. ELSTON. Section 6 applies to—

Mr. BIDDLE (interposing). Any plant taken possession of.

Mr. ELSTON (continuing). To any plant which the Government has taken possession of?

Mr. BIDDLE. Yes; either in the past or in the future.

Mr. ELSTON. There would not be legislation under section 6 as to plants that were already taken over and given back.

Mr. BIDDLE. I mean plants that the Government had taken and were in possession of at the time the act was passed.

Mr. ELSTON. If it referred to plants which had been taken over by the Government—and I grant you it did—it certainly referred to plants which were taken over under section 3.

Mr. BIDDLE. Or in any other way.

Mr. ELSTON. It does not say that, does it?

Mr. BIDDLE. No; but it is perfectly clear.

Mr. ELSTON. It says, "this legislation"—and "this legislation" refers to the legislation then under consideration, and that was the War Labor Disputes Act.

Mr. BIDDLE. No; section 6 does not say plants taken over under section 3, it says "plants taken over by the Government."

Mr. ELSTON. The only plants authorized to be taken over by the Government were in section 3.

Mr. BIDDLE. You would argue then that section 6 did not apply to the coal mines, because they were taken over not under section 3.

Mr. ELSTON. I would not contend for a moment it does not apply to the coal mines.

Mr. BIDDLE. They were not taken over under section 3.

Mr. ELSTON. I know, but section 3 says "plant, mine, or facility," so obviously it applies to the coal mines. I do not contend otherwise.

Mr. BIDDLE. Mr. Congressman, the coal mines were taken over before the passage of the act, and section 6 makes this a crime for that mine which was taken over, not under section 3.

Mr. ELSTON. I grant you that that is true, but at the same time Congress recognized the legality of the seizure of the mines under section 3.

Mr. BIDDLE. They were not taken over under section 3.

Mr. ELSTON. They recognized that they could be.

Mr. BIDDLE. They recognized that they could be; yes.

Mr. ELSTON. Mr. Chairman, I will take some time yet.

The CHAIRMAN. The committee will take a recess until 2:30.

(Whereupon, at 1 p. m., the committee recessed until 2:30 p. m. this day.)

AFTERNOON SESSION

(The hearing was resumed at 2:30 p. m., following the recess.)

The CHAIRMAN. The committee will come to order.

Mr. Elston, you have some further questions?

Mr. ELSTON. Yes. Mr. Biddle, when we closed this morning I was asking you about some of the provisions of the War Labor Disputes Act.

I believe that it is your contention that section 7 of that act, which legalizes the War Labor Board and gives it the authority to act in labor disputes, is connected with section 3, which is the section that gives the President the right to seize a plant, mine, or facility.

Mr. BIDDLE. And with all of the other sections of the act.

Mr. ELSTON. And with all of the other sections of the act.

Now, as you stated this morning, section 7 was enacted principally because the War Labor Board did not have the authority to subpoena witnesses.

Mr. BIDDLE. I think that was one reason it was enacted.

Mr. ELSTON. Well, was there any other reason?

Mr. BIDDLE. I think the reason was to fix the powers of the Board by statutory authority.

Mr. ELSTON. They were exercising some authority, and this was simply to give them some statutory life?

Mr. BIDDLE. Yes.

Mr. ELSTON. Now, you do not question, do you, the statement that Mr. Davis made that section 7 does not give the War Labor Board any authority—I mean, does not provide any authority for carrying out the Board's orders?

Mr. BIDDLE. In court.

Mr. ELSTON. Yes.

Mr. BIDDLE. That is right.

Mr. ELSTON. Now, you know, of course, that section 7 and section 3 were not contained in the original plant seizure bill?

Mr. BIDDLE. Yes.

Mr. ELSTON. Section 6 was a House measure, and the plant seizure bill was a Senate measure.

Mr. BIDDLE. Yes.

Mr. ELSTON. Now, in section 3 Congress used these words:

* * * Any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith.

Congress just used three words, "plant, mine, or facility," and then specified that they must be equipped as I have indicated.

Don't you think that is a limitation on simply plants, mines, or facilities, so equipped?

Mr. BIDDLE. Well, it depends on what you mean by the word "production." It all revolves around that, doesn't it? In other words, would Congress, if it had meant a narrow construction of "production," have also used the word "manufacture"?

Mr. ELSTON. You can conceive of a case where there would be production which might necessarily mean manufacture.

Mr. BIDDLE. Which would incline me to think that the word "production" was used more broadly than "manufacture."

Mr. ELSTON. Have you examined the definition of the word "production" in the dictionary?

Mr. BIDDLE. I have examined the cases dealing with the word, which seems to me more important; in other words, the legal definition of "production."

Mr. ELSTON. Well, now, if Congress intended the word "production" to include "distribution," don't you think Congress would have used the word "distribution"?

Mr. BIDDLE. I think that depends on the other sections of the act. There are other statutes—taxing statutes—where the word "production" was held to include a much broader scope than "manufacture."

Mr. ELSTON. The same language is not employed all through the act. For example, in section 8 we used the expression "plant, plants, mine, mines, facility, facilities, bargaining unit or bargaining units, as the case may be."

Congress even distinguished between the singular and the plural, although in law the singular means the plural. Congress went to that care in deciding the type of plants it was referring to.

Now, don't you think if Congress went to all that care in section 8 they would even be more careful in section 3, which conferred the greatest possible power on the President of the United States; namely, the power to seize a plant?

Mr. BIDDLE. I thought I had made my position clear. Let me repeat it.

The word "production" is used several times in the act. It seems to me you torture the language to say that in one section it means one thing, and in another section another thing.

Although those sections are taken, as you pointed out, sir, from different bills, some from the House and some from the Senate, nevertheless the whole mechanism set up by the act was a comprehensive mechanism. First, under section 8, notice had to be given—the cooling-off period. Then, if the dispute persisted, it was taken to the War Labor Board. If it could not be settled, powers were given to the President. And finally, if, after possession or taking, a strike was ordered by the union, criminal sanctions were put in.

So that there is a consistent policy all through the act. Therefore I say it does not seem to me that the intent of Congress was to pick out a narrow construction for the word in a single section, when it would not do justice to the entire mechanism set up by the act.

You must remember that what Congress had in mind in these debates was two things, substantially, and that appears throughout. The first was that they would broaden section 9 of the old act, of the Selective Service Act, to cover mines as well as plants. The miners were striking. They were interested in bringing the mines in. And secondly, that the section would be broadened not only where an employer had refused priority orders of the Government, but to include striking miners. Those were the things that the debate was centered around, and nowhere is there a debate of the meaning of the word "production." That is perfectly clear, I say.

Mr. ELSTON. Well, don't you think that is because there wasn't any question about the definition of the word "production"?

Mr. BIDDLE. Yes; I do.

Mr. ELSTON. I happened to be on the committee that wrote this bill.

Mr. BIDDLE. Well, I didn't have that advantage, but my view of it, in studying the act, is, as I said, that "production" is used in a broad sense.

Mr. ELSTON. Well, you might produce water through a waterworks, but not necessarily manufacture water.

Mr. BIDDLE. Well, you might.

Mr. ELSTON. Now, when Congress passed section 3 and provided that plants, mines, or other facilities equipped for making war goods might be seized, they went still a step further and applied another safeguard; not only does the plant, mine, or facility have to be equipped to manufacture war goods, but before it can be seized the President must find, after investigation, and he must proclaim, that there is an interruption of the operation of such plant, mine, or facility as a result of a strike or other labor disturbance, the war effort will be impeded or delayed by such interruption, and that the exercise of such power and authority is necessary to insure the operation of such plant, mine, or facility in the interest of the war effort.

Mr. BIDDLE. That is right, and the President so found in this order.

Mr. ELSTON. Well, the President didn't make any such proclamation, did he, in the *Montgomery Ward case*?

Mr. BIDDLE. He didn't make any proclamation. He issued an Executive order. Therefore he found that Montgomery Ward was engaged in production in the sense of the act.

Mr. ELSTON. You don't contend that he made any proclamation as provided for in section 3, do you?

Mr. BIDDLE. He made a finding.

Mr. ELSTON. Well, does that appear in his order?

Mr. BIDDLE. Yes. I have it in front of me. Shall I read it?

Mr. ELSTON. He proclaimed, did he not, that there were existing and threatened interruptions, but did he proclaim that it was a plant, mine, or facility engaged in the manufacture or production of war material?

Mr. BIDDLE. Well, this is the recital:

Whereas after investigation I find and proclaim that there are existing and threatened interruptions of the operations of the plants and the facilities of Montgomery Ward & Co., located in Chicago, Ill., as a result of labor disturbances arising from the failure of Montgomery Ward & Co. to comply with directive orders of the National War Labor Board; that the war effort will be unduly impeded or delayed by these interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure, in the interest of the war effort, the operation of these plants and facilities and other plants and facilities which are threatened to be affected by the said labor disturbances.

Now, let us see what the act requires him to find. Section 3 of the act requires:

* * * whenever the President finds, after investigation, and proclaims that there is an interruption of the operation of such plant, mine, or facility * * *

The President finds and proclaims that there are existing and threatened interruptions of the operations of the plants and facilities of Montgomery Ward. It follows the statute as closely as it could be followed, I should think.

Mr. ELSTON. Did the President conduct any investigation?

Mr. BIDDLE. I don't quite know what you mean by that. The facts were given him by the National War Labor Board.

Mr. ELSTON. In other words, he acted solely on what was told him by the War Labor Board?

Mr. BIDDLE. And the other agencies of the Government that had to do with this particular situation.

Mr. ELSTON. Now, Mr. Biddle, if you claim that section 7 should be considered along with every other section, I take it then that you feel that there is some relationship between section 7 and section 8?

Mr. BIDDLE. Well, now, just a minute. There is a relationship between all these sections, but you have to determine what that relationship is, and I am not sure that I know what you mean.

Mr. ELSTON. Let me be more specific. Section 8 requires a 30-day cooling-off period?

Mr. BIDDLE. That is right.

Mr. ELSTON. And that section is very specific, isn't it, as to when a strike vote shall be taken? It provides, in subsection 3:

On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled * * *

Mr. BIDDLE. Yes.

Mr. ELSTON. Well, this one was not settled.

Mr. BIDDLE. It certainly was. The War Labor Board entered its order.

Mr. ELSTON. Well, the election hadn't been held, had it?

Mr. BIDDLE. No; but the War Labor Board entered its order.

Mr. ELSTON. All right.

Mr. BIDDLE. After the War Labor Board has entered its order, the provisions of the 30-day notice, of course, do not come into effect.

Mr. ELSTON. Do not the provisions of the act come into effect whenever a strike is threatened?

Mr. BIDDLE. Yes.

Mr. ELSTON. Wasn't a strike threatened in Chicago?

Mr. BIDDLE. Yes; but there had been far more than a 30-day cooling-off period. This had been going for 3 months.

Mr. ELSTON. Hadn't this notice been given?

Mr. BIDDLE. I don't know whether it had technically been given. I don't think the act provides any form of notice. The union had brought the dispute to the attention of the Board.

Mr. ELSTON. I thoroughly agree with you on that, that no particular form of notice was necessary. Let me read this:

On the thirtieth day after notice under paragraph (1) is given by the representative of the employees, unless such dispute has been settled, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, plants, mine, mines, facility, facilities, bargaining unit, or bargaining units, as the case may be, with respect to which the dispute is applicable, on the question whether they will permit any such interruption of war production. The National Labor Relations Board shall include on the ballot a concise statement of the major issues involved in the dispute and of the efforts being made and the facilities being utilized for the settlement of such dispute. The National Labor Relations Board shall by order forthwith certify the results of such balloting, and such results shall be open to public inspection.

Now, then, there isn't any question but what the National Labor Relations Board had notice of the controversy; there isn't any question but what they had notice that a strike was impending. If the National Labor Relations Board, after the passage of 30 days, had forthwith conducted an election, the election would have been over—

Mr. BIDDLE. An election on the strike, you mean?

Mr. ELSTON. Yes. The election would have been over before the plants were seized and no seizure would have ever been necessary.

Mr. BIDDLE. Mr. Congressman, what kind of an election do you mean? Do you mean an election to strike or an election to see who represents the employees?

Mr. ELSTON. Election to strike.

Mr. BIDDLE. Oh, election to strike. That has to do with the war contractor, of course, under section 1.

Mr. ELSTON. That is true.

Mr. BIDDLE. Ward's was not a war contractor.

Mr. ELSTON. That is just the point I am making; that it was not a war contractor. Now, do you agree with me?

Mr. BIDDLE. It had, I think, one or two war contracts.

Mr. ELSTON. Well, now, their war contracts were not in Chicago.

Mr. BIDDLE. And were not involved in this dispute.

Mr. ELSTON. And your order of seizure refers only to Chicago.

Mr. BIDDLE. That is right.

Mr. ELSTON. And yet when the time came to seize the plant you had to contend that they were a war contractor under this definition.

Mr. BIDDLE. No, no. Clearly not. I have never suggested that. I have never suggested that the basis of seizure depended upon

whether, technically, the employer was a war contractor. You have made that suggestion. I have not.

Mr. ELSTON. All right, granting that; if this section requires a vote, why was not it conducted in this case?

Mr. BIDDLE. I don't think this involved a war contract. This didn't involve a dispute of the employees of a war contractor. I don't think the Chicago plant had any war contracts.

Mr. ELSTON. Let's read the definition of a war contractor.

The term "war contractor" means the person producing * * *

You claim Montgomery Ward produced?

Mr. BIDDLE. Montgomery Ward undoubtedly comes under the definition of "war contractor."

Mr. ELSTON. Does Montgomery Ward come under the definition of "war contractor"?

Mr. BIDDLE. Undoubtedly, yes.

Mr. ELSTON. Didn't you say a moment ago that it did not, or did I misunderstand you?

Mr. BIDDLE. No; you misunderstood.

Mr. ELSTON. I am sorry. You claim it does come under the definition of "war contractor"?

Mr. BIDDLE. Certainly.

Mr. ELSTON. Ward's of Chicago?

Mr. BIDDLE. I think "war contractor" covers any form of distribution. That is as I remember it. Let us look at the definition. A contract with the United States entered into on behalf of the United States, and so on. It is a contract between the United States and a contractor. And that is not limited to manufacturing—is that what you mean?

Mr. ELSTON. Let us read it:

The term "war contractor" means the person producing, manufacturing, constructing, reconstructing, installing, maintaining, storing, repairing, mining, or transporting under a war contract, or a person whose plant, mine, or facility is equipped for the manufacture, production, or mining of any articles or materials which may be required in the prosecution of the war or which may be useful in connection therewith; * * *

That is a pretty complete definition, isn't it?

Mr. BIDDLE. Very complete.

Mr. ELSTON. And certainly much more complete than the definition in section 3, isn't it?

Mr. BIDDLE. Yes; and that is one reason I used that to illustrate the breadth of the entire statute, outside of section 3. I used those very definitions to show how broad the language is.

Mr. ELSTON. If Congress intended to include every war contractor—the section I just read is section 2, the next section is section 3—why didn't they just simply say "the war contractors referred to in the previous section," or "such war contractors"?

Mr. BIDDLE. They didn't say that; no.

Mr. ELSTON. They limited it to three things.

Mr. BIDDLE. And the question is what those three things mean, and I said by studying the act it shows that "production" is used by Congress in a broad sense. We are back where we started.

Mr. ELSTON. All right. Now, then, let us assume that you are correct in saying that Montgomery Ward was a war contractor. Can you give us any reason at all why the Labor Relations Board did not

forthwith, at the expiration of the 30 days, when they had notice that there was going to be a strike, conduct an election as the statute requires?

Mr. BIDDLE. Well, I take it that the act covers work by a war contractor engaged in war production. Now, that was not the problem in Chicago.

Mr. ELSTON. You say now that this section 8 applies to a war contractor engaged in war production?

Mr. BIDDLE. And the dispute in Chicago did not apply to a war contract, a contract of a contractor engaged in war production.

Mr. ELSTON. Well, I thought you just said a moment ago that the word "production" included "distribution."

Mr. BIDDLE. There is no question that what Ward did came under that term. The question was, What was involved in the Chicago dispute? Now, that did not involve production under a war contract by a war contractor.

The CHAIRMAN. Mr. Elston, will you let me ask you a question to clarify my own thinking?

Mr. ELSTON. Yes.

The CHAIRMAN. Is it your contention that the National Labor Relations Board ever received the notice required in section 8? I don't so understand.

Mr. ELSTON. Yes; and I think the Attorney General agrees that no particular form of notice was necessary.

Mr. BIDDLE. I agree that no notice was required in this controversy.

Mr. ELSTON. Let us go a step further. When you seized this plant in Chicago you seized it because you feared a strike?

Mr. BIDDLE. Yes.

Mr. ELSTON. You seized it because, as you say, there was the threat of a strike, or there was a strike?

Mr. BIDDLE. Yes.

Mr. ELSTON. Why didn't you insist on the invoking of section 8 and have this 30-day cooling-off period that Congress had provided for, instead of just seizing the plant?

Mr. BIDDLE. No. 1 is, "there was no strike when we seized it."

Mr. ELSTON. Well, there was a threatened strike?

Mr. BIDDLE. But not in that union. There were plenty of threatened strikes everywhere else. No; the minute the President said, "Go back to work," the strikers went back to work. They obeyed the order. Montgomery Ward wouldn't.

Mr. ELSTON. Well, they just went back. But they expected the Government to seize the plant, didn't they?

Mr. BIDDLE. I can't tell you what they expected.

Mr. ELSTON. As a matter of fact, the truth is that the reason they didn't proceed at any time under section 8 is because the National Labor Relations Board or nobody else considered Montgomery Ward & Co. in Chicago a war contractor, they didn't consider them as a plant, mine, or facility, as described in section 3.

Mr. BIDDLE. I agree entirely on that with this modification, that they were not considered a war contractor with respect to that dispute, nor was the basis of the seizure on the ground that they were a war contractor.

Mr. ELSTON. Well, let us take up your statement a little further then.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON. You said, on the day that this seizure took place, Mr. Avery, having made no move to go into court to test the legality of your action, you filed a bill in equity. Had Mr. Avery or Montgomery Ward & Co. ever made any effort before to test the legality of the War Labor Board's order?

Mr. BIDDLE. They certainly had.

Mr. ELSTON. And they had made that effort to test it in court?

Mr. BIDDLE. In what?

Mr. ELSTON. In court.

Mr. BIDDLE. Yes, indeed.

Mr. ELSTON. They made the effort twice in the courts of the District of Columbia, didn't they?

Mr. BIDDLE. That is right.

Mr. ELSTON. And you resisted them?

Mr. BIDDLE. That is right.

Mr. ELSTON. You asked to have that case dismissed?

Mr. BIDDLE. That is right.

Mr. ELSTON. Why didn't you want them to have this question determined?

Mr. BIDDLE. I would have been delighted to have the question determined. What I was saying there was that Montgomery Ward hadn't gone into court in order to enjoin the seizure by the United States, which was the only way they could test it. I had been seeing in the papers every day statements to the effect that counsel for Montgomery Ward were preparing a bill and were going to file it.

Mr. ELSTON. If they had gone into court and they had sought an injunction against the United States to prevent the United States from seizing their plant, wouldn't you have set up in that action the same thing you set up in the district court, and that is they didn't have the consent of the United States to file the suit?

Mr. BIDDLE. Certainly not. We would have taken the position, as I have taken it before this committee, that the question then to be determined was whether or not, first, the President had the power to seize, under the statute or out of the statute, and, secondly, whether that power had been arbitrarily exercised. The Kentucky court held that the officer in charge of the plant could be sued; he was sued; and they held that there was jurisdiction of the court to decide that question.

Mr. ELSTON. Of course, the Kentucky decision hadn't been rendered at that time.

Mr. BIDDLE. No; that is right. I think it can be said that the question would certainly have been tested by a bill of injunction, but certainly not by an action against the War Labor Board.

Mr. ELSTON. If you were so anxious to have the question determined in Chicago, why didn't you let the case be decided by Judge Holly?

Mr. BIDDLE. We didn't prevent Judge Holly from deciding the case.

Mr. ELSTON. You could have had the case decided if you remained in possession until the next day after the election was conducted, couldn't you?

Mr. BIDDLE. The United States had no right to stay in possession, and I cannot imagine how anybody can advocate that it should stay in possession except for the purpose of the election. After that the

United States had no right to stay in possession. Now, I don't care how long we had stayed, if we had stayed a week or 2 weeks, the moment we went out of possession that case was moot, and there could have been no appeal from either side. Now, I assume, although I don't know, that Judge Holly considered that in making his decision.

Mr. ELSTON. Now, Mr. Biddle, I want to take up the last part of your statement.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON. In which you claim that even though there was no War Disputes Act, the President had the power and the authority to seize the properties of Montgomery Ward & Co.

Now, where do you claim the President obtains that power?

Mr. BIDDLE. From the Constitution.

Mr. ELSTON. What part of the Constitution?

Mr. BIDDLE. Well, I think chiefly from the fact that he is made Commander in Chief of the Army and the Navy, and, of course, from the decisions of the Supreme Court which have sustained his constitutional powers in time of war, several instances of which I have cited in the brief.

Mr. ELSTON. Well, what decisions of the Supreme Court are you referring to?

Mr. BIDDLE. I have several of them. I haven't got the brief before me, but I think I can give you some if you will bear with me a moment. *U. S. v. Russell*; *Dashiell v. Grosvenor*; *Roxford Knitting Company v. Moore*; *Mitchell v. Harmony*; and the *Hirabayashi case*.

In those cases, of course, the facts are not analogous to this case. The question, so far as I understand, has not been specifically presented. The only case where this question has been presented is in the *Kentucky case*.

Mr. ELSTON. The last case you mentioned was the case decided by our present Supreme Court in 1943, wasn't it?

Mr. BIDDLE. The *Hirabayashi case*, yes.

Mr. ELSTON. Yes.

Mr. BIDDLE. And I, of course, cited that for a specific quotation, not for the decision. Shall I read that quotation?

Mr. ELSTON. The Court in that case very distinctly approved the case of *Ex parte Milligan* in the 71 U. S., at page 2, which case was decided in 1866. It is one of the leading cases in the United States isn't it?

Mr. BIDDLE. Well, I would say that it is extremely doubtful whether the *Milligan case* is still the law of the United States. Certain of the language of the *Milligan case* was quoted favorably by the Court. That is a different thing. The *Milligan case*, you remember, was a five-to-four decision, and the *Milligan case* involved a very narrow question, involving a statute passed sometime after the Civil War, providing that if persons were arrested in time of war they had to be brought before the grand jury within a certain period of time. *Milligan* was arrested and was not so brought before the grand jury. The court treated the appeal really as a petition for habeas corpus. It was a five-to-four decision, as I remember, with the Chief Justice dissenting. They actually held that the statute should be followed in that case.

Mr. ELSTON. The Constitution was the same in the Civil War, with the exception of a few amendments that have been added at the end of it; as it is now?

Mr. BIDDLE. No question about that, but there has been a good deal of definition since then.

Mr. ELSTON. Let me ask you if you agree with this statement of the Court. I am referring to a statement of Justice Murphy, who concurred in the opinion of the Court. [Reading:]

It does not follow, however, that the broad guaranties of the Bill of Rights and other provisions of the Constitution are suspended by the mere existence of a state of war.

Mr. BIDDLE. I agree entirely, Mr. Congressman. I don't think they are ever suspended.

Mr. ELSTON (reading):

It has been frequently stated and recognized by this Court that the war powers, like the other great substantive powers of Government, are subject to the limitation of the Constitution.

Mr. BIDDLE. I agree.

Mr. ELSTON. And they cite with approval *Ex parte Milligan* that I just referred to.

Mr. BIDDLE. I think that is absolutely right, and I would like to repeat, as I have said all through this brief, that this taking was subject to every constitutional provision, was subject to the fifth amendment, was subject to the necessity of taking for public benefit, and was subject to just compensation. I repeat that again and again, and I repeat that under no circumstances can any clause in the Constitution be waived during war. I agree with you entirely, sir.

Mr. ELSTON. Now, the Constitution vests in the United States Government its sole authority, the Federal Government has no authority except what may be given to it by the Constitution.

Mr. BIDDLE. Yes; and the power reasonably inferred from the Constitution.

Mr. ELSTON. And the President, as Commander in Chief and as President, receives all his power from the Constitution.

Mr. BIDDLE. That is right.

Mr. ELSTON. Now, the President, as Commander in Chief of the Army and the Navy, only has the power to perform certain military functions, hasn't he?

Mr. BIDDLE. Oh, no. Far more. You mean military functions in the field of action or in the domestic field, in the country itself?

Mr. ELSTON. Well, his authority is limited as Commander in Chief of the Army and Navy.

Mr. BIDDLE. That is right.

Mr. ELSTON. He only has authority as Commander in Chief of the Army and the Navy, hasn't he, to act in a military capacity? I am not referring now to his other powers as Chief Executive, but as Commander in Chief of the Army and Navy he acts as Commander in Chief of the Army and Navy.

Mr. BIDDLE. Yes.

Mr. ELSTON. Now, the Constitution provides that the only guaranty under the Constitution that may be suspended in time of war is the writ of habeas corpus, doesn't it?

Mr. BIDDLE. Yes. As I said a minute ago, I think that very clearly no rights under the Constitution can be waived. Of course, that is a right which specifically can be suspended, but that is done under the Constitution.

Mr. ELSTON. Well, if the Constitution provides that that is the only constitutional right that may be waived during wartime, how do you justify the seizure of the private property of Montgomery Ward & Co., when no invasion of this country is threatened?

Mr. BIDDLE. But the invasion is not the test. Invasion isn't the test. Who suggested invasion?

Mr. ELSTON. Have you any authority that says the President can seize private property?

Mr. BIDDLE. I think, if you look at the cases, the test has nothing to do with the nature of the property. That is obvious. The test has to do with the nature of the emergency. In the *Russell case* there were three private steamboats, private property. The Supreme Court said the President can seize them in time of war, no question about it, without a statute, after paying just compensation.

Mr. ELSTON. I have no quarrel with that case, because that case was in the exercise of military power and military authority, but was the President exercising military power or military authority when he seized Montgomery Ward & Co.?

Mr. BIDDLE. Certainly. Your argument would lead to a conclusion as to which I should think you might hesitate, sir, that the President had no authority to take over coal mines, would it not?

Mr. ELSTON. Well, the coal mines were producing coal for the Government, weren't they?

Mr. BIDDLE. I have argued all morning that Montgomery Ward were about as closely tied into this war effort as anybody could be.

Mr. ELSTON. They had no contracts with the Government. The coal mines did.

Mr. BIDDLE. They had a couple, but they were not important. I don't know of any contracts that the coal mines had with the Government. Were there any? I haven't heard of any.

Mr. ELSTON. Well, they had them with the Army and the Navy, didn't they?

Mr. BIDDLE. I don't know of any. I never heard of them. They had them with plenty of private contractors. There may have been some with the Army. But the point was that the coal mines were an essential business, they were providing coal to carry on the war. Now, to say that the President could not seize the coal mines because it wasn't a military operation, I wouldn't go as far as that.

Mr. ELSTON. When you seized the property of the Montgomery Ward Co. in Chicago, you called on the militia, you called in the Army?

Mr. BIDDLE. Called on the Army.

Mr. ELSTON. Yes.

Mr. BIDDLE. As we have in practically every other case, as Congress knew we had in all the cases before the passage of the act, and specifically approved the Executive order, and inferentially the steps taken under it.

Mr. ELSTON. Do you think that you have the right to call on the Army and exert military power when the courts of the land are open?

Mr. BIDDLE. If the President's power is clear to take action, it is perfectly clear that he can call in the Army to enforce his power. Once you admit the President's power, it essentially follows that he can use whatever force is necessary to carry it out. There can be no question about that.

Mr. ELSTON. Well, you practically invoked martial law, didn't you?

Mr. BIDDLE. Certainly not. It had nothing to do with martial law. The courts were open and functioning.

Mr. ELSTON. You certainly used the Army to a certain extent, didn't you?

Mr. BIDDLE. We certainly did, as we did in every other case of seizure. The courts were open. They could have gone into court any time they wanted to. It had nothing to do with martial law, absolutely nothing to do with martial law.

Mr. ELSTON. You made the statement in Chicago, and you repeated it here, on page 24, that no business or property that is essential to the conduct of the war is immune from the exercise of that power, referring to the power to seize.

Mr. BIDDLE. The requisitioning power.

Mr. ELSTON. Requisition and seizure.

Mr. BIDDLE. That is right.

Mr. ELSTON. Adding that it is subject, again, to the requirement of fair compensation imposed by the fifth amendment.

Mr. BIDDLE. That is right.

Mr. ELSTON. Now, by "no business or property that is essential to the conduct of the war," you take in every business in the United States, don't you, if it is essential to the conduct of the war?

Mr. BIDDLE. Of course. The test is not the nature of the business. Let us take this grocery argument again, which has been so misrepresented to the people. Or let us take a little farm. The United States is taking little farms every day where it is essential to the conduct of the war, for instance, for training grounds. It is being done all the time. But compensation must be paid, and it must be taken for the war effort. So obviously the test is not the kind of property taken, but the emergency and its closeness to the war. That is the essence.

Mr. ELSTON. You do not contend that the Army of the United States, whenever they want to establish a proving ground, simply moves in?

Mr. BIDDLE. Certainly not.

Mr. ELSTON. They go into the courts, don't they, if they can't—

Mr. BIDDLE. No.

Mr. ELSTON. Wait until I finish.

Mr. BIDDLE. They file an action of taking, that is all they do. They take it long before the courts act. They take it immediately.

Mr. ELSTON. The courts determine the compensation and they take by virtue of the statute passed by Congress.

Mr. BIDDLE. Certainly. And the courts never go back to see whether or not the particular property taken is necessary for the war, because they say that the Army knows what they need, and we will not substitute our judgment for the Army's judgment.

Mr. ELSTON. It is simply the exercise of the right of eminent domain.

Mr. BIDDLE. Requisition, I think, is the more exact wording.

Mr. ELSTON. That has always been the law. The Government has the right to condemn, the court fixing the value if the parties cannot agree.

Mr. BIDDLE. Precisely. And the constitutional question must be precisely the same, whether the property is taken by the President's power as Commander in Chief, or under the statute. The constitutional question is the same because, if the President couldn't take it constitutionally, he couldn't take it under a statute. If you are

talking about the Constitution, you have to go back to the basic thing, and the basic thing is, is the property needed? As I say, under certain crises, important crises, the President can take property without a statute, and that has been sustained many times. The most striking example of that is the coal mines. Or if the longshoremen struck tomorrow, I have no doubt that any court would sustain the power of the President to stop that strike which would prevent the goods going to our soldiers.

So the test must be, not that the President hasn't got that power, but whether it is arbitrarily exercised, and the test of the arbitrariness has nothing to do with the kind of property seized, but is the crisis that he is faced with when he takes it. It seems to me that is uncontrovertible.

Now, I will, of course, admit that the courts will always review as to whether he acted with reasonableness. No question about that. Therefore, I find it very difficult to follow your argument, sir.

Mr. ELSTON. Who passes on this question of essentiality?

Mr. BIDDLE. You mean the requisitioning of property?

Mr. ELSTON. Yes; where the President takes over property.

Mr. BIDDLE. The courts always pass on it, as I said, they will review it to see whether or not he has acted reasonably or arbitrarily.

Mr. ELSTON. Well, the courts will pass on the question of essentiality in condemnation proceedings, but—

Mr. BIDDLE. No, no.

Mr. ELSTON. All right.

Mr. BIDDLE. No; they do not.

Mr. ELSTON. All right. Here the President seized first; there was no court action at all; the President simply moved in and took possession of the property of Montgomery Ward Co. in Chicago.

Mr. BIDDLE. As the Army does when it requisitions property.

Mr. ELSTON. The Army proceeds under condemnation statutes enacted by Congress?

Mr. BIDDLE. That is right.

Mr. ELSTON. That is the difference. The President was not proceeding according to any act of Congress, unless you claim section 3 applicable.

Mr. BIDDLE. Well, I do.

Mr. ELSTON. That is beside the point.

Mr. BIDDLE. Yes.

Mr. ELSTON. We are considering the question regardless of the War Labor Disputes Act. When the President went into the plant in Chicago and took it, he wasn't proceeding by virtue of any condemnation statute, was he, such as used by the Army and Navy when they take over real estate?

Mr. BIDDLE. Well, leaving out section 3, he was proceeding under his powers as Commander in Chief, as I said.

Mr. ELSTON. Now, if he does proceed, not because of any condemnation statute, such as may be used by the Army and the Navy, but simply by virtue of this constitutional power which you say he has as Commander in Chief, who passes on the question of whether or not the property which he is seizing is essential to the war effort?

Mr. BIDDLE. I don't think the court will ever substitute its judgment in determining whether it is needed or not. As I have said several times the court will determine whether or not there was any arbitrary or unreasonable action.

Mr. ELSTON. Well, now, to get back to my question again, who is it that passes on the question then if the courts do not do it?

Mr. BIDDLE. The courts do pass on the question.

Mr. ELSTON. Well, they don't do it if the President seizes without going into court. If someone has told him that it is essential and he makes the seizure.

Mr. BIDDLE. Well, the courts do not decide that.

Mr. ELSTON. What I am getting at is this, the President decides that question, doesn't he?

Mr. BIDDLE. What question.

Mr. ELSTON. I will state it again. Where the President seizes property like Montgomery Ward, not under any condemnation statute but simply under what you claim is his constitutional powers.

Mr. BIDDLE. Yes.

Mr. ELSTON. Who determines whether or not that seizure is essential to the war effort?

Mr. BIDDLE. The courts.

Mr. ELSTON. Did the courts determine it in the *Montgomery Ward case*?

Mr. BIDDLE. The court will not substitute their judgment for the President's in making the decision. They will only say if the President was supported by reasonable grounds or if he acted arbitrarily. The courts have said that again and again and again, and the test of executive seizure is no different than the test under the statute, because it is a constitutional problem.

Mr. ELSTON. The courts didn't determine that in the *Montgomery Ward case*, did they?

Mr. BIDDLE. I am sorry?

Mr. ELSTON. You said the courts determined that question. The courts didn't determine it in the *Montgomery Ward case*.

Mr. BIDDLE. No; the courts did not determine that in the *Montgomery Ward case*.

Mr. ELSTON. Then who did determine it?

Mr. BIDDLE. Well, it has never been determined by the courts.

Mr. ELSTON. Who held that it was necessary to seize that property?

Mr. BIDDLE. The President.

Mr. ELSTON. The President. I finally got it.

Mr. BIDDLE. You would have gotten it much quicker, if you had asked me the question. I thought that was rather obvious.

Mr. ELSTON. That is what I have been asking you right along.

Mr. BIDDLE. I want to have it very clearly understood. The court question can always be raised when the Government goes in. Either side can ask for injunction. We didn't ask for injunction, for possession, as, I have said, because the court could say to the United States, "You say you have the right, yet you can't go into possession." We asked for an injunction in aid of our possession, to stop illegal interference with Government possession. That is all we asked for. Montgomery Ward could have come in at any time and said, "This is an arbitrary and illegal seizure, and we ask for an injunction against it. In fact they would be asking then that the bill be dismissed."

Mr. ELSTON. Your injunction suit only went to the other question. You were trying to enjoin the officers and employees of Montgomery Ward from interfering with your possession?

Mr. BIDDLE. That is right.

Mr. ELSTON. I yield to my friend from North Carolina.

Mr. CLARK. I would like to ask one question.

Leaving section 3 entirely aside and dealing with section 7, Congress has authorized and directed the War Labor Board to hear and decide these disputes that are likely to lead to a serious interference with the war effort, and they shall fix the terms and conditions and they shall be in force until the further order of the Board. That is the law enacted by Congress.

Now, in this particular case, on the 13th of January the Board issued this order. The first item in it is the terms and conditions of the contract between the parties effective December 8, 1942. According to my mind it is in compliance with the power conferred upon the Board in section 7 of the act. Now, Montgomery Ward declined to comply with that order. Wasn't it therefore in the position of refusing to obey the law as fixed by Congress?

Mr. BIDDLE. Yes.

Mr. CLARK. Well, now, what about that part of the Constitution which, entirely aside from the war powers, requires the President to see that the law is carried into effect? I don't remember the exact language in the Constitution, but it is to the effect that he must be alert and diligent in seeing that the law is carried out. Could that have any bearing on the question of seizure?

Mr. BIDDLE. I think it has this bearing. We cite the declaration of war as the general provision which also warranted this, but it must be said, Mr. Clark, it seems to me, that the question that—put it this way: That that provision certainly puts the responsibility on the President to find some way of enforcing that law. No question about that. And then the question is: Is that a legal way of enforcing the law? I think certainly that what you point out shows the grave responsibilities that the President has; this law was flouted by Montgomery Ward; and should the President, under those conditions, sit idle and do nothing about it?

Mr. CLARK. Does not the Constitution require him to seize?

Mr. BIDDLE. Yes; that is right.

Mr. CLARK. Thank you, Mr. Elston.

Mr. ELSTON. That is all right. I am glad to yield.

Now, following up what Mr. Clark said, that the Constitution requires the President to see to it that the laws are obeyed, that means the laws of Congress, of course.

Mr. BIDDLE. Certainly.

Mr. ELSTON. It follows that Congress must first pass the law before the President acts?

Mr. BIDDLE. Yes; but, Mr. Congressman, there is no dispute over section 7, I think we all agree—I hope so, anyway—section 7 clearly gives the Board final powers over all labor disputes, and that order was disobeyed by Montgomery Ward.

Mr. ELSTON. I don't disagree with you at all. That is exactly what section 7 does.

Mr. BIDDLE. Yes.

Mr. ELSTON. It gives the War Labor Board the power to settle all labor controversies.

Mr. BIDDLE. Yes.

Mr. ELSTON. But where we violently disagree is that all of those cases that may be taken notice of by the Labor Board under section 7 can result in seizures under section 3.

Mr. BIDDLE. That is right.

Mr. ELSTON. Getting back to our other proposition, that the President passes on the question of what shall be seized, leaving out the War Labor Disputes Act now, that means that he can seize any property he wants to; doesn't it?

Mr. BIDDLE. No; certainly not.

Mr. ELSTON. All right. It means that he can seize any property so long as he himself determines that it is essential in the war effort?

Mr. BIDDLE. No.

Mr. ELSTON. All right. Who determines that question?

Mr. BIDDLE. The court, in the ultimate analysis.

Mr. ELSTON. But the court does not determine it until after the seizure.

Mr. BIDDLE. Of course not.

Mr. ELSTON. Yesterday, when I made the point that the Government could go into court and get a mandatory injunction, Mr. Davis said: "There is no use doing that because the question won't be determined until the war is over." If that is the case, the President could seize a plant or any property that he determined was essential in the war effort, and if all the owner could do was to go in court and ask for an injunction and not get a decision until the war is over, his property might be gone.

Mr. BIDDLE. You must remember that the Congress told the President to act very promptly.

Mr. ELSTON. Congress didn't tell the courts to act promptly.

Mr. BIDDLE. They couldn't very well.

Mr. ELSTON. Of course not. You can conceive, can't you, of a man, whose property is seized solely by virtue of Presidential decree, going into the courts and asking for an injunction and litigating for several years?

Mr. BIDDLE. No. If there is not a proper basis for seizure the court will enter a temporary restraining order.

Mr. ELSTON. That is the way the courts act in injunction cases. They do act promptly.

Mr. BIDDLE. Certainly, they act very promptly.

Mr. ELSTON. That is what I was arguing with Mr. Davis yesterday, but he didn't agree, on mandatory injunctions; but there is always the right of appeal from even an injunction case.

Mr. BIDDLE. Yes; and if there is a showing of great injustice, of course, there will be a supersedeas.

Mr. ELSTON. But you can appeal to the circuit court of appeals, and you can appeal to the Supreme Court, and by the time your appeal is decided the war may be over.

Now, Mr. Biddle, do you feel that a law which leaves it solely up to a labor union to determine whether an election shall be held is a good law?

Mr. BIDDLE. As I understand the act, the employer can, under certain circumstances, apply for an election. Where, for instance, two labor unions are involved, I understand he can under those circumstances.

Mr. ELSTON. Do you find anything in the National Labor Relations Act that says that an employer cannot ask for an election the same as an employee?

Mr. BIDDLE. No; but I haven't given any study to the act recently, although I did give it study at one time.

Mr. ELSTON. If there was nothing to bar Montgomery Ward & Co. from asking for an election in this case, why wasn't it granted?

Mr. BIDDLE. Well, the N. L. R. B. has taken the position right along that an employer under these circumstances could not ask for an election. That is the law, whether you like it or not.

Mr. ELSTON. I have just another question or two, and then I will be through.

Mr. BIDDLE. Yes, sir.

Mr. ELSTON. Referring back to something that was said this morning, about the seizure of the coal mines, and the strike in the coal mines, at the time Mr. Lewis was defying the War Labor Board, were you asked for an opinion in the matter?

Mr. BIDDLE. Well, we were asked for an opinion as to whether or not the President could seize the mines. When the Executive order was about to be issued, it was sent over to us and we approved it.

Mr. ELSTON. Of course, it wasn't the mine operators who were offended, it was Mr. Lewis.

Mr. BIDDLE. The union.

Mr. ELSTON. Were you ever asked by the President to give an opinion as to whether or not a labor union can be seized?

Mr. BIDDLE. No.

Mr. ELSTON. What is your opinion about that?

Mr. BIDDLE. You mean whether the property of a labor union can be seized?

Mr. ELSTON. Yes.

Mr. BIDDLE. I should think it would be very doubtful whether without a statute the President could seize a labor union. I think I get the drift of your question. May I expand a little bit?

Mr. ELSTON. Yes.

Mr. BIDDLE. In some ways, Mr. Avery and Mr. Lewis are peculiarly alike.

Mr. ELSTON. Well, Mr. Lewis is a little heavier, isn't he?

Mr. BIDDLE. Yes; Mr. Lewis is a little heavier.

Mr. ELSTON. It would be harder for soldiers to carry him.

Mr. BIDDLE. Yes; much heavier. But in this way they are alike. Mr. Lewis defied the Board and said that he was never a party to the no-strike, no-lock-out agreement. He said, "We were not consulted, and therefore we don't think the Board has any legal jurisdiction," Well, Mr. Avery, as I suggested this morning, said the same thing. Let me quote from his statement on December 10. Mr. Avery, in full-page advertisements all over the country—this is 1942—said:

Ward's was not a party to the agreement.

That is the no-strike agreement.

Wards had no voice in the selection of those who were representative of industry attending the conference of December 1941, which formulated the agreement. Wards has never ratified the result of that conference.

So, in that respect they are alike. They don't recognize their Government; but in other respects they are not.

The Government never has been resisted in seizing a plant, by anyone except Avery. John L. Lewis never resisted the seizure of the mines.

I can conceive of no law which would give the President a right to walk over to Mr. Lewis' office and arrest him—nor, for that matter,

to go and arrest Mr. Avery. The right came when Avery refused possession by his Government. When he resisted that possession, the Government had to take him out of possession of the property. That is the difference. Avery resisted possession. Lewis did not.

There you have a similarity on one side and a difference on the other.

Mr. ELSTON. If the President has this great constitutional and inherent authority and power that you have described to us this afternoon, to take over a company irrespective of the War Labor Disputes Act, hasn't he, by the same token, the power and authority to take over the property of an offending labor union?

Mr. BIDDLE. What property, the union's funds?

Mr. ELSTON. Yes.

Mr. BIDDLE. I don't think the union funds have anything to do with the operation of the plant. The President took over the property to keep it operating. I can't see how walking into a union office would keep the plant operating.

Mr. ELSTON. You only took over Montgomery Ward for the purpose of keeping it operating?

Mr. BIDDLE. We took it over for the purpose of stopping interruption with its operation.

Mr. ELSTON. You took over the management, didn't you?

Mr. BIDDLE. We took the plant. You don't take management or labor, you take a plant.

Mr. ELSTON. Now, Mr. Biddle, you were present, weren't you, when Mr. Avery was forcibly removed from his office by soldiers of the United States Army?

Mr. BIDDLE. Yes.

Mr. ELSTON. How did you happen to go out there personally?

Mr. BIDDLE. Well, we were going to file a bill of complaint, and this was an important case, and I thought the duty of the Attorney General was to see it through.

Mr. ELSTON. You mean you were going out to file this injunction suit in the court?

Mr. BIDDLE. Well, to do whatever was necessary.

Mr. ELSTON. Who gave the order—

Mr. BIDDLE. Who gave what order?

Mr. ELSTON. I didn't finish my question.

Mr. BIDDLE. I beg your pardon.

Mr. ELSTON. Who gave the order to carry Mr. Avery out?

Mr. BIDDLE. Mr. Taylor.

Mr. ELSTON. Did you give any order?

Mr. BIDDLE. No. I indicated very clearly what I thought should be done, but I was merely a lawyer.

Mr. ELSTON. Will you tell us the exact words you used in indicating very clearly what you thought ought to be done?

Mr. BIDDLE. Let me give you the whole picture.

The day before, as you know, Mr. Taylor had been out to the plant and spent most of the day there. Mr. Avery was there. He refused to cooperate. Mr. Taylor gave him a certified copy of the order. He gave him a letter from the Secretary of Commerce asking him to cooperate and to operate the plant under the Government. Mr. Avery said it was an illegal procedure and refused to cooperate. He said, "I want more force."

Well, then, Mr. Taylor brought some marshals down. Mr. Avery said, "No, that is not enough force." Then, some soldiers were brought in, and about that time it was the end of the day and Mr. Avery went home.

When I got out the next day the soldiers were in the plant. Mr. Avery came in about 10 o'clock. We all talked. Mr. Taylor was there, Mr. Avery, Major Weber, in command of the soldiers, myself. We asked Mr. Avery again to cooperate. We talked for several minutes. He said he would not cooperate in any way. He said he would not recognize the Government and he would counterorder any of our orders. He would not ask any of his men to do anything we asked.

I said to Mr. Avery, as well as I remember it: "We are acting under the order of the President, and we must operate this plant."

He said: "I won't cooperate; you will have to use force to get me out of here; this is where I belong."

I asked him if he wouldn't go out with Major Weber. He said he would not. And then it was Mr. Taylor that suggested to Major Weber that he request Mr. Avery to leave. Mr. Avery refused. Then, the soldiers made a little seat with their hands and Mr. Avery was taken out of the plant. He did not come back the next day.

Mr. ELSTON. The soldiers, of course, were there, with fixed bayonets?

Mr. BIDDLE. I don't remember seeing any bayonets. There were certainly no bayonets in the room.

Mr. ELSTON. Are you sure about that?

Mr. BIDDLE. I don't think there were. They didn't use any bayonets. He wasn't carried out on bayonets, if that is what you mean.

Mr. ELSTON. There was a soldier in each corner of the room, wasn't there?

Mr. BIDDLE. Well, I don't remember about that. There were three or four soldiers there that carried him out.

Mr. ELSTON. In the office?

Mr. BIDDLE. Yes.

Mr. ELSTON. And you felt it was necessary to have the soldiers there?

Mr. BIDDLE. I thought they would do a better job than the marshals, and I wasn't going to do it personally.

Mr. ELSTON. You had nine marshals there, didn't you?

Mr. BIDDLE. Not at that time. That was before.

Mr. ELSTON. You had had nine?

Mr. BIDDLE. Yes.

Mr. ELSTON. Mr. Biddle, without carrying Mr. Avery out of his plant and dumping him on the sidewalk, couldn't you, after you had gone to the plant and had taken possession of it, regardless of Mr. Avery, gone into court with the very proceeding that you went in with after you took him out?

Mr. BIDDLE. We were working all day on our bill. We started to write the bill the first thing in the morning, and as soon as we got through we went into court.

Mr. ELSTON. It wasn't necessary then for you to get into court, to have the soldiers carry Mr. Avery out?

Mr. BIDDLE. I don't think it was necessary for me to get into court.

Mr. ELSTON. That is not exactly an answer to my question. You could have gone into court, and you could have gotten the injunction that you were praying for, without taking Mr. Avery out of his office?

Mr. BIDDLE. I dare say we would have never gotten the injunction. If there was any doubt of the court helping us that resistance decided the doubt in our favor.

Mr. ELSTON. Did you ask the court to continue the case until after the election?

Mr. BIDDLE. No.

Mr. ELSTON. That is all.

The CHAIRMAN. Mr. Monroney.

Mr. MONRONEY. Mr. Biddle, going back to the events leading up to the seizure of Montgomery Ward.

Mr. BIDDLE. Yes.

Mr. MONRONEY. The case began to attract national attention and the passing attention of the War Labor Board when Montgomery Ward refused to bargain with the union, alleging that the union lacked a majority of the employees of the plant. Wasn't that the beginning?

Mr. MONRONEY. December 1942, wasn't it?

Mr. BIDDLE. December 1942; yes.

Mr. MONRONEY. Montgomery Ward wanted an election of the employees?

Mr. BIDDLE. Yes.

Mr. MONRONEY. To determine whether the union was the legitimate bargaining agent?

Mr. BIDDLE. Yes.

Mr. MONRONEY. Later, this was secured—perhaps through a rather devious route—by having the union ask for the election?

Mr. BIDDLE. Well, I don't think it was devious.

Mr. MONRONEY. I mean, a circuitous route.

Mr. BIDDLE. The War Labor Board could order an election, they could simply say they would continue this if the union asked for an election within a certain time.

Mr. MONRONEY. But the union was satisfied with claiming that they represented the employees.

Mr. BIDDLE. Yes.

Mr. MONRONEY. So the fact is that the election was finally held. Montgomery Ward proceeded on that theory—the union was asking for it.

Mr. BIDDLE. The union was asking for it.

Mr. MONRONEY. The union was satisfied.

Mr. BIDDLE. Yes.

Mr. MONRONEY. So that the matter of the election was to the advantage of Montgomery Ward in their claim that the union didn't have an election.

Mr. BIDDLE. I am glad you brought that out, because it is very unusual where a union has been certified to have an election over again.

Mr. MONRONEY. So there was a rather circuitous procedure, at least, to effect this election?

Mr. BIDDLE. Well, I don't like your word "circuitous."

Mr. MONRONEY. Well, the election was effected.

Mr. BIDDLE. Yes.

Mr. MONRONEY. The War Labor Board in that matter urged or ordered the maintenance of the status quo as to the union's position and the employer's position in the plant for 30 days until an election could be held?

Mr. BIDDLE. Yes.

Mr. MONRONEY. This, as I understand, Montgomery Ward & Co. failed to do.

Mr. BIDDLE. Refused to do.

Mr. MONRONEY. Refused to comply with the maintenance of the status quo until the election, which they themselves had urged should be held.

Mr. BIDDLE. Yes; and that status quo didn't only involve maintenance of membership, it involved arbitration of disputes, security, and other provisions. The status quo was not only on the maintenance clause, it was on all the labor clauses in the contract.

Mr. MONRONEY. Since Montgomery Ward did refuse to maintain the status quo then the President ordered the seizure, to carry out the orders of the War Labor Board which had been refused by Montgomery Ward?

Mr. BIDDLE. Yes. But you must remember the President gave Montgomery Ward another chance. He wired both sides. He sent the same telegram to the union and to Montgomery Ward. And Montgomery Ward said, "No, we won't comply."

Mr. MONRONEY. They had already gotten the election which they were after, but they refused to carry out the other part, the maintenance of the status quo?

Mr. BIDDLE. That is true.

Mr. MONRONEY. Then seizure was ordered by the President?

Mr. BIDDLE. Yes.

Mr. MONRONEY. And on page 19 of your statement, you say the order was served upon Mr. Avery.

Mr. BIDDLE. A certified copy of the Executive order.

Mr. MONRONEY. Then, Mr. Avery refused to recognize the order, or to admit that Mr. Taylor had taken possession of the plant.

Mr. BIDDLE. Yes. Which was the only time anyone had ever done that under any seizure.

Mr. MONRONEY. Before the seizure has merely been a taken effect, has it not? There has been no necessity for force. I believe you said in your statement that in 25 other seizures, the very formality of the Government requesting, or assuming possession of the plant, has been sufficient for management and labor?

Mr. BIDDLE. Yes, sir.

Mr. MONRONEY. Further in your statement—

Mr. BIDDLE. May I interrupt a moment?

Mr. MONRONEY. Surely.

Mr. BIDDLE. There were two cases, one was the Kentucky case, in which the employer—I think in each—he wanted to test the legality of the seizure, and did so by filing a bill for injunction, but not by resisting the Government.

Mr. MONRONEY. The Government has always been admitted to possession of the plant when seizure has been ordered of the plant, except in the case of Mr. Avery and Montgomery Ward?

Mr. BIDDLE. Yes.

Mr. MONRONEY. Then eight deputy marshals were brought in.

Mr. BIDDLE. I wasn't there, but I am so reliably informed.

Mr. MONRONEY. The point I am trying to establish is: Did the Army come in before the marshals?

Mr. BIDDLE. No; the marshals came in first.

Mr. MONRONEY. And Mr. Avery, you say, took the position that that was not a sufficient show of force?

Mr. BIDDLE. He said specifically, "That is not enough force."

Mr. MONRONEY. He said specifically that that was not a sufficient show of force, was not sufficient to show seizure of the plant?

Mr. BIDDLE. Yes.

Mr. MONRONEY. And then the soldiers were moved in as a token taking of possession of the plant?

Mr. BIDDLE. Yes. Most of them were left downstairs, and a few were put around the plant.

Mr. MONRONEY. Mr. Avery still said that that was not a sufficient show of force?

Mr. BIDDLE. Yes.

Mr. MONRONEY. Previously, Mr. Jones, the Secretary of Commerce, offered to leave Mr. Avery in charge for the Government?

Mr. BIDDLE. Yes. He wrote him a letter—which I think is attached to the brief—stating that he would be glad to have him work under the Government.

Mr. MONRONEY. Have you any evidence of Mr. Avery's instructions, as you allege, to his employees to disobey Mr. Taylor's request and refuse to recognize the Government's possession?

Mr. BIDDLE. He specifically told me that, and I talked to several of the employees, several of the heads of the various departments, and they said that those were Mr. Avery's instructions.

Mr. MONRONEY. Following that, Mr. Avery was requested to leave the plant?

Mr. BIDDLE. Yes.

Mr. MONRONEY. And he refused to do so?

Mr. BIDDLE. Yes.

Mr. MONRONEY. The point I am getting at is, and I think it has not been completely understood, that in 25 other seizures there had not been any show of force, and that in this case it appears that numerous requests were made, even after the military was moved in, for Mr. Avery to surrender the plant, and they were denied.

Mr. BIDDLE. That is true. When you say "show of force," let me say this, that in most of the seizures the Army was present, to be used if there was any resistance. This case was no different from any other case. And, as far as Mr. Avery is concerned, his actual words to Major Weber were "You have got to carry me out."

Mr. MONRONEY. That was the statement that he made?

Mr. BIDDLE. That is my recollection of his words.

Mr. MONRONEY. Now, that brought into being a rather important issue under the Labor Disputes Act, did it not, the section which prohibits interference with the operation and of the seizure of a plant, if there was a question of whether the plant was under the control of Mr. Avery or under the control of Mr. Taylor; it would have made it difficult both for the management of the company to know how to operate and also in the matter of interference with a Government plant?

Mr. BIDDLE. That is true.

Mr. MONRONEY. Did that have anything to do with Mr. Avery's insistence on remaining in the plant?

Mr. BIDDLE. Well, it is a little hard to judge. I think Mr. Avery very obviously wanted to make the best case he could to test his legal rights.

Mr. MONRONEY. Would you say that that was one of the reasons for his refusal to leave voluntarily?

Mr. BIDDLE. Obviously what Mr. Avery wanted was to be carried out so that the issue could be squarely presented.

Mr. MONRONEY. In order to protect certain rights that he thought he had?

Mr. BIDDLE. Yes.

Mr. MONRONEY. And the statement you make is as it actually happened, to your knowledge.

Mr. BIDDLE. To the best of my knowledge, yes.

Mr. MONRONEY. There was nothing in writing as to his refusal to leave?

Mr. BIDDLE. No; he didn't put anything in writing, he just would not go.

Mr. MONRONEY. Going back to another part of your statement, I believe you mentioned that there were something like nine seizures that took place before the War Labor Disputes Act was passed?

Mr. BIDDLE. Yes.

Mr. MONRONEY. That, you said, was under the general war powers of the President?

Mr. BIDDLE. Yes.

Mr. MONRONEY. Ever questioned in law?

Mr. BIDDLE. No, no. Not only were they not questioned, Mr. Monroney, but when Congress, in section 7, specifically legalized the Executive order under which those seizures had been made, it seems to me that it is fair inference to say that, having a knowledge of all those seizures—which were published in the Register under the Executive orders—it approved the way the President had been handling this situation prior to the passage of the act, and going on for a long period of time, even before the war started, during the emergency, and where Congress had specifically before it a history of the administrative and Executive action under that Executive order, and approved the Executive order and recognized the Board in the statute.

Mr. MONRONEY. And you mentioned in your brief and in your statement, that in addition to the War Disputes Act, these powers, which had not been questioned in the seizures before the War Disputes Act was passed, were also important war powers that the President had?

Mr. BIDDLE. Yes.

Mr. MONRONEY. In your estimation, do you think the War Labor Disputes Act expands or contracts the powers that the President had been exercising?

Mr. BIDDLE. I would put it this way, Mr. Monroney: I would say that they approved the powers of the Board exercised under the President's orders, and that, as I have argued in some detail in my statement, they at the same time recognized the existence of the President's power, irrespective of the act, in dealing with the criminal provisions relating to seizures by the Government, and that they

added certain minor but important specific things. The two I have in mind are the subpoena power, which clearly the Board didn't have before, and also I don't think the Board had the power to take up disputes on its own motion. That is my recollection. That under the old procedures it had to be brought up by the Conciliation Service. But now the Board can take it up, under the statute, on its own motion.

Mr. MONRONEY. You don't think that the act was passed to confine the President's power but more or less to clarify it and add to it, instead of restrict?

Mr. BIDDLE. I do. I agree entirely.

Mr. MONRONEY. The policy of maintenance of status quo, I believe, in the plants, is recognized by Congress in that Act?

Mr. BIDDLE. Specifically. Section 4, Mr. Congressman. May I read that?

Mr. MONRONEY. Yes.

Mr. BIDDLE (reading):

Except as provided in section 5 hereof, in any case in which possession of any plant, mine, or facility has been or shall be hereafter taken under the authority granted by section 9 of the Selective Training and Service Act of 1940, as amended, such plant, mine, or facility, while so possessed, shall be operated under the terms and conditions of employment which were in effect at the time possession of such plant, mine, or facility was so taken.

So, Congress recognizes, I think it is fair to say, the value of continuing the status quo.

Mr. MONRONEY. And that was pretty much what the issue was at the time the Government seized the Montgomery Ward plant?

Mr. BIDDLE. The precise issue.

The CHAIRMAN. Will the gentleman from Oklahoma yield?

Mr. MONRONEY. Yes.

The CHAIRMAN. In section 8 of the War Labor Disputes Act, paragraph 2, there is provided a cooling-off period, and it also mandatorily requires that the existing conditions, conditions existing at the time the dispute arose, shall continue.

Mr. BIDDLE. Yes. I had forgotten that.

Mr. MONRONEY. In drafting this act, and when it was up for passage—of course, the act reflects the problem before the Congress at the time, that is probably why you see mines emphasized rather strongly in the act.

Mr. BIDDLE. Yes.

Mr. MONRONEY. I am wondering if a transportation service struck, a bus line, or if some other strikes of a peculiar nature had been plaguing the Nation at the time, if Congress wouldn't have been more specific in spelling out a vast number of things rather than covering it with the general word "facilities"?

Mr. BIDDLE. I think that is important to keep in mind, because you can pick out words of a Congressman or words of a Senator all through these debates in one direction or another, but the essential thing is that what Congress was considering was the fact that the old section 9 did not apply to labor disputes, and the debates were all directed to that, mainly. And nowhere was "production" discussed. That was the essence of the thing. I think that ought to be remembered all through this.

Mr. MONRONEY. But the word "facility," you claim, would leave it open enough to take care of anything that was important in the prosecution of the war?

Mr. BIDDLE. That is clear, I think. I don't think there has been a dispute that the word "facility" doesn't cover these plants in Chicago.

Mr. MONRONEY. I recall the case out in Arlington of the bus strike, which evidently wouldn't be spelled out in this act. No court action or seizure took place there. But I am wondering if there aren't thousands of cases where the implied right of the Government to seize a facility necessary in war production has not resulted in striking employees returning to their jobs? The point I am making is, if the act is so confined, as Montgomery Ward claimed it to be, then the mechanism that has returned many thousands of strikers to jobs, under threat of seizure, or implied threat of seizure of the plant because of strike, has not that relieved us of hundreds or perhaps thousands of labor cases that would continue to impede war production?

Mr. BIDDLE. I think so, because obviously, if the workers or employers thought that there was no way in which this Board could get its orders enforced, why go to the Board; and, therefore, they must have had in mind, it seems to me, as you suggest, that this act was intended to enforce the Board's order.

Mr. MONRONEY. It seems rather inconceivable to me that if we follow the line that only those things that are actually manufacturing war goods would come under this War Labor Disputes Act we would find ourselves going to almost the point of absurdity. I can visualize a case such as, perhaps, these kid plane plants, making these small airplanes for airplane identification, would be seized under this act, and yet a Nation-wide strike of all the grocers of the A. & P. Co., would be outside of the act entirely.

Mr. BIDDLE. I think that is true.

Mr. MONRONEY. Or a plant manufacturing, on one side of the street, dungarees for the Army Air Force, and a plant on the other side manufacturing overalls that were sold in the town to the employees of the Douglas airplane plant; one would be subject to action of the War Labor Board and the other would be completely outside the confines of the act.

Mr. BIDDLE. I think the A. & P. stores are a good illustration of the way a strike can spread. I represented the A. & P. some years ago in Pennsylvania. There was a strike solely over the construction of a labor clause between the A. & P. and the union representing its employees. In 24 hours the city of Philadelphia was tied up in a strike in every industry. It lasted about a day and a half. But it is an example of the way that kind of thing can spread.

Mr. MONRONEY. Doesn't it then seem, if we are to have an intelligent labor policy, if the act is not broad enough to cover it, that it should be broad enough to cover it; that the decrease of importance of the threatened labor disputes in the war effort is far more important than the badge or label that might be on the company itself?

Mr. BIDDLE. I think so.

Mr. MONRONEY. And by the same token the importance of the labor dispute, the size of the labor dispute, the number of people involved, and the continuity of labor difficulties, also have an important bearing in the labor dispute, rather than the isolated or more infrequent minor disturbances within one plant, regardless of its size?

Mr. BIDDLE. Precisely. When Congressman Dewey asked me about the Sears, Roebuck situation, I said we didn't take plants on account of their size, but if strikes are threatening in plants the size has a great deal of weight, as affecting the national production.

Mr. MONRONEY. Can you fill in on the theory of the emergency war powers that Congress has given to the President?

In other words, if Congress is able to spell out in every single circumstance the exact situation that we might meet in the prosecution of the war, would there be any need for any extraordinary powers as we have consistently voted to the President?

Mr. BIDDLE. I am not sure if I follow the purport of your question.

Mr. MONRONEY. The point I am asking you about is: Is one of the compelling reasons why Congress has voted extraordinary powers to the President, not only in labor but in other matters, because of the fact that we, as Members of Congress, recognize that there are situations in the conduct of a war where it is impossible to spell out letter by letter and word by word the situation that will be met?

Mr. BIDDLE. I think that is true, and I think that the Congress has recognized that in an emergency there has to be some discretion so that the Executive can act promptly. Of course, Congress, after all, is fundamentally interested in the prosecution of the war, and, therefore, has very wisely given the President power to act in the emergency of a war economy.

Mr. MONRONEY. A situation might arise where if the specific legislation had to be passed, it might require 3, 4, or 6 months before the various processes of legislating for that particular thing could be fulfilled.

Mr. BIDDLE. I can't help coming back to my illustration of the stevedores, because it seems most pertinent. There isn't a word under section 3 that would specifically, if interpreted in this narrow way, give the power to the President to prevent a strike whereby the loading of vessels carrying arms to our soldiers—there is not a word in that section, if narrowly interpreted, that would give the President power to prevent that strike, and yet I can hardly think that any Member of Congress, if that occurred, would say that the President cannot act to send those goods to the front. It seems a good example of that in that word "production" under this narrow definition.

Mr. MONRONEY. That is all.

The CHAIRMAN. Mr. Curtis.

Mr. CURTIS. Mr. Biddle, when did you first talk with the President of the United States about the seizure of the Ward plant?

Mr. BIDDLE. I didn't talk to him at all about it.

Mr. CURTIS. You never conferred with him at all?

Mr. BIDDLE. No, sir.

Mr. CURTIS. Were you present when he signed the Executive order directing a seizure of the plant?

Mr. BIDDLE. No.

Mr. CURTIS. Were you present at any of the interdepartmental conferences?

I believe one was held on April 16, in reference to the seizure.

Mr. BIDDLE. I don't remember any meeting on April 16. I talked to the members of the War Labor Board—either I or my associates talked to members of the War Labor Board—and the matter was

discussed in great detail with Mr. Davis, and members of the Board, with their lawyers, and with Mr. Byrnes, who is acting for the President in the matter.

Mr. CURTIS. How long before the seizure?

Mr. BIDDLE. I suppose the discussions were going on for a period of a week or possibly 10 days. Every phase of the question was gone into. The question of priorities, which has been suggested here, was discussed. I don't mean the priorities, I mean the sanctions. That was discarded. The question was discussed in great detail as to whether the War Labor Board or the Government could go into court without seizure. That was discarded. Every possible detail was considered.

Mr. CURTIS. Did they tell you at those meetings why they didn't hold an election?

Mr. BIDDLE. I don't remember that anybody stated that, but I am perfectly clear from the discussions—I have attempted to say that, but let me go over that again.

In the first place, the War Labor Board could not grant an election. That was very clear. The War Labor Board, however, after Montgomery Ward urged that the union did not represent its employees, said:

Although this is unusual we will nevertheless enter an order for an election, because there has been a big turn-over in this union, and we want to be very fair to Montgomery Ward, but this election must be held under fair circumstances.

I thought I had gone over this.

Mr. CURTIS. Yes. My question was not that.

Mr. BIDDLE. I beg your pardon.

Mr. CURTIS. I asked whether or not they stated any reason at these conferences why they wouldn't hold an election?

Mr. BIDDLE. I am trying to give you the reason.

Mr. CURTIS. I didn't ask for the reason. I am asking whether or not they told you.

Mr. BIDDLE. Well, the situation was explained to us. I am trying to give you what the essence of that was. First, the War Labor Board could not order an election. That was perfectly clear.

Mr. CURTIS. Now, yesterday, Mr. Reilly of the National Labor Relations Board was here, and under questioning he gave us the date that the union filed their petition asking for recertification, and under the procedure that was necessary, Mr. Reilly showed that an election could be held by the middle of March, under the established procedure of the National Labor Relations Board.

Mr. BIDDLE. I have no doubt that an election could be held, as soon as the union filed an application—no question about that.

Mr. CURTIS. You agree with that?

Mr. BIDDLE. I should think that is self-evident. The question was whether the election would be fair and conform to the order of the Labor Board.

Mr. CURTIS. Under the National Labor Relations Act, who handles the election?

Mr. BIDDLE. The National Labor Relations Board.

Mr. CURTIS. And they are always fair?

Mr. BIDDLE. Yes.

Mr. CURTIS. And any election would have to be fair or they would have authority to rehold it, or reject it?

Mr. BIDDLE. I don't know about that. Here the contract was over last December. For 3 months the company had refused this union.

Mr. CURTIS. They didn't refuse to recognize the union in four or five of the bargaining units, did they?

Mr. BIDDLE. I am talking about this specific one.

Mr. CURTIS. I am talking about Chicago.

Isn't it true that Wards were willing to continue to negotiate with four or five of the bargaining units but raised the question as to the matter of representation in two of them?

Mr. BIDDLE. I have no knowledge of Wards agreeing to bargain with any of the unions.

Mr. CURTIS. That was the testimony in the last 2 days here.

Mr. BIDDLE. Of course, I am concerned with the particular dispute here. As to other unions, I know nothing.

Mr. CURTIS. But any election that would have been held would have been held by the National Labor Relations Board?

Mr. BIDDLE. Certainly.

Mr. CURTIS. Did you ever confer with anyone connected with the management of Wards about the seizure prior to the time the property was taken over?

Mr. BIDDLE. No, sir.

Mr. CURTIS. Did you ever confer with any member of labor about the seizure?

Mr. BIDDLE. No, sir.

Mr. CURTIS. The area in Chicago, Ill., was not under martial law during any of this time, was it?

Mr. BIDDLE. No.

Mr. CURTIS. Were the Federal courts open and functioning all through this time?

Mr. BIDDLE. Sure. We went into it.

Mr. CURTIS. You do not contend that Chicago was a theater combat in the war? I mean that seriously. I want it for the record.

Mr. BIDDLE. Yes. I will answer that. I contended this: Chicago was one of the tightest labor areas in the country. The War Production Board would not give them any more contracts because the labor situation was so tight, and in that area you had a strike involving five or six thousand employees—a very serious situation.

It seems to me, Mr. Curtis, that you have put your finger on it exactly. Chicago was a very serious production area, and had a very close connection to the war. Now, to simply say, in a sentence, that Chicago was not an area of the war, is like saying production in our munition plants is not an area of war and therefore we are not interested in it. It seems to me we sometimes miss the fundamental issues involved, that this is a total war and that our whole economy is directed to it.

Mr. CURTIS. What is your answer to my question?

Do you contend that Chicago is a theater of combat?

Mr. BIDDLE. Certainly not.

Mr. CURTIS. The civil processes of government were not interrupted?

Mr. BIDDLE. Except by Mr. Avery.

Mr. CURTIS. Any remedy that existed under the Labor Relations Act was not denied during this time?

Mr. BIDDLE. I don't know what you mean by that.

You mean Mr. Avery didn't deny it?

Mr. CURTIS. For instance, you complain that certain laws have been violated.

Mr. BIDDLE. I don't complain; I state.

Mr. CURTIS. All right. And that Ward's was guilty of certain labor practices. Under the National Labor Relations Act if any of these offenses constitute an unfair labor practice there is a remedy under the act, isn't there?

Mr. BIDDLE. Surely.

Mr. CURTIS. And none of those remedies were denied at that time; during all this trouble in Chicago, they were still available?

Mr. BIDDLE. Certainly.

Mr. CURTIS. Whatever they were.

Mr. BIDDLE. Yes. I think you miss my point when I speak of the fairness of the election. When Ward was doing everything they could for 3 months to destroy that union, the War Labor Board said, "We can't have a fair election in the midst of that atmosphere."

Mr. CURTIS. Ward doesn't hold the election?

Mr. BIDDLE. No.

Mr. CURTIS. As a matter of fact, this committee has not heard any evidence with respect to destroying the union.

Mr. BIDDLE. I don't know what evidence the committee has taken.

Mr. CURTIS. We have your statement that Ward had done this, but we have had no specific instances brought before us.

Mr. BIDDLE. What I was stating was that there was a serious situation there. The men were being discharged improperly.

Mr. CURTIS. What date did you go to Chicago?

Mr. BIDDLE. It was the second day. The 27th of April. The plant was seized one day; I went out the next. It was the 27th of April, as I remember.

Mr. CURTIS. Did you go to the Ward property?

Mr. BIDDLE. Yes.

Mr. CURTIS. Where did you go?

Mr. BIDDLE. I went up to Mr. Avery's office.

Mr. CURTIS. How long were you in that office?

Mr. BIDDLE. Most of the day.

Mr. CURTIS. Who was in Mr. Avery's office when you arrived?

Mr. BIDDLE. I think his name was Mr. Branch. He was Mr. Avery's secretary.

Mr. CURTIS. Anyone else?

Mr. BIDDLE. I don't think there was anyone else in Mr. Avery's office. We saw other executives during the time we were there.

Mr. CURTIS. There were no soldiers in the office at that time?

Mr. BIDDLE. I don't remember precisely when the soldiers came into the office. It was soon after we arrived and talked to Major Weber and other members, before Mr. Avery arrived.

Mr. CURTIS. Did Mr. Avery arrive while you were there?

Mr. BIDDLE. He arrived at 10 o'clock. I was still there.

Mr. CURTIS. Who ordered the Federal Bureau of Investigation into the Ward property?

Mr. BIDDLE. I directed that the Federal Bureau of Investigation should investigate whether or not any crime was being committed by

persons in the Ward plant, tearing down the notices posted by the Government. That had been going on for several days, and it seemed to me a very serious thing, so I ordered the agents to investigate who was committing the crime. Their function, as you know, is to investigate Federal crimes.

Mr. CURTIS. Yes. And do you remember what day they were ordered in there?

Mr. BIDDLE. Let's see. It was after I had left Chicago. It was after the argument of the case. I can't remember the specific day. Perhaps you have a record of it.

Mr. CURTIS. I do not.

Mr. BIDDLE. I can find that out. The case was argued Monday or Tuesday; we got back Wednesday. I would think Wednesday, Thursday, or Friday. I don't remember the exact day.

Mr. CURTIS. Do you remember how many men were sent in?

Mr. BIDDLE. I don't remember that.

Mr. CURTIS. Did you order the United States marshals—

Mr. BIDDLE. Just to answer that further, I wouldn't direct a thing like that. That is a matter of detail. I called up my United States attorney and told him to see that this crime was not committed or, rather, to apprehend any persons who were committing those crimes, and then he directed whatever was necessary—three or four agents—to cover the different rooms, because there were posters all over the plant and in the warehouse, and everywhere else.

Mr. CURTIS. Did you order the United States marshal and his seven deputies into Ward's?

Mr. BIDDLE. No.

Mr. CURTIS. Do you know who did?

Mr. BIDDLE. Well, I think it was discussed between Mr. Taylor and my representative, Mr. Lucy, who was with Mr. Taylor at the time, and I think they called me up in Washington and suggested that they would have marshals come to the plant before calling in the troops and I approved it, and I suppose in that sense you could say ordered it.

Mr. CURTIS. Do you know what instructions were given to the marshals?

Mr. BIDDLE. I don't know that any instructions were given to the marshals. They were told specifically not to make any arrests unless ordered to. I remember that.

Mr. CURTIS. A marshal is an officer of the court, is he not?

Mr. BIDDLE. Very definitely, yes.

Mr. CURTIS. In your opinion, does the United States marshal have authority to demand property of individuals without a writ from a proper court?

Mr. BIDDLE. To do what?

Mr. CURTIS. In your opinion, does the United States marshal have authority to demand the possession of property from citizens without a writ from a proper court?

Mr. BIDDLE. I don't think that their action would be confined to the issuance of a writ. I think they could exercise their authority under statute without specific writ. Marshals are not confined to action solely under writs issued by the court. I think they would have to be acting legally, but I don't know that they would have to be acting under a writ.

Mr. CURTIS. Could you give an illustration of where a marshal could lawfully demand possession of property without a writ from a proper court?

Mr. BIDDLE. Well, for instance, food that was subject to inspection, and so on. The marshal could seize it without a specific writ of the court. I don't think he would be required to have a writ for that purpose. They, of course, had nothing to do with the possession. They were not exercising possession; they were not seizing any property.

Mr. CURTIS. Did they ask for the property?

Mr. BIDDLE. No.

Mr. CURTIS. What were they there for?

Mr. BIDDLE. Well, they were there to display a little force, I suppose, and to try to impress Mr. Avery that the United States was in.

Mr. CURTIS. Does the marshal have authority to come into a plant and display force without a writ of the court?

Mr. BIDDLE. I don't know if they were displaying much force. They were sitting around. And obviously if the United States had possession of the plant it could bring its marshals in there.

Mr. CURTIS. Now, did the President seize the Montgomery Ward properties in Chicago as Commander in Chief or as President?

Mr. BIDDLE. Well, I don't know if you can split a personality to that degree. I suppose if I had to choose one or the other, I should say the Commander in Chief. It is a little difficult for me to split it up into two parts that way. You see, as President he is Commander in Chief. It is the same thing, in a sense.

Mr. CURTIS. Just why did the President seize the Ward properties in Chicago?

Mr. BIDDLE. Well, we will have to go back into the history. I don't know how much detail you want.

Mr. CURTIS. As brief as you can.

Mr. BIDDLE. The act provided, under section 3, that the President could seize under the circumstances which I have outlined here. The order of the War Labor Board had been defied by Montgomery Ward and there had been an interruption in the plant, and, therefore, I would say that he seized it because Congress had told him to.

Mr. CURTIS. Is there anything in the Smith-Connally Act which states that if an order of the Labor Board is not obeyed the property may be seized?

Mr. BIDDLE. No, no; and that is a good point, because I think that the President has a right to seize a plant without any order of the War Labor Board, and so says this Kentucky judge; he says specifically that the President has power to seize because he is carrying on the war as President, and the War Labor Board's order really has nothing to do with that. He could get information from any source he wished.

Mr. CURTIS. The Kentucky case was manufacturing, was it?

Mr. BIDDLE. Yes.

Mr. CURTIS. Isn't it true, Mr. Biddle, that section 3 of the Smith-Connally Act does not provide that the War Labor Board has to make an order or even have jurisdiction before the President can seize the property?

Mr. BIDDLE. That is right.

Mr. CURTIS. So an order of the War Labor Board does not necessarily have any connection with the seizure?

Mr. BIDDLE. Not necessarily. It has had, so far, in every seizure, but I suppose you could say not necessarily.

Mr. CURTIS. Isn't it true that there isn't a word in sections 7 or 8 of the Smith-Connally Act that states that if the orders are not obeyed, the President can seize the property?

Mr. BIDDLE. That is true. You see, the procedure is that where there is a dispute the Board certifies to the President. As was suggested a little while ago he can apply these sanctions. He may want to do that. Or he can seize it. He can do many things. He is not confined. He has very broad powers. You are quite right in that.

Mr. CURTIS. As a matter of fact, the rulings of the War Labor Board are advisory only, aren't they?

Mr. BIDDLE. Yes, and final.

Mr. CURTIS. They are matters of moral persuasion.

Mr. BIDDLE. Yes. And the chances are if the moral persuasion doesn't work, the President will step in.

Mr. CURTIS. You are familiar with the case in the district court here in Washington wherein Montgomery Ward was plaintiff and the National Labor Relations Board was defendant, Case No. 21483?

Mr. BIDDLE. Precisely. I cited that in the appendix that I handed up to the committee.

Mr. CURTIS. And your office appeared for the National Labor Relations Board in that case?

Mr. BIDDLE. Yes, sir.

Mr. CURTIS. In the statement of facts filed in that case I find this:

The Board's orders, under Executive Order 9017, are not legally binding upon the parties to the labor dispute and do not fix or alter their legal rights.

Mr. BIDDLE. That is precisely true. In other words, it does not give them the right to come into court. It is not an enforceable order.

Mr. CURTIS. You also stated in that pleading:

There is no restraint on the parties to do what the parties may decide what they should do except moral restraint.

Mr. BIDDLE. Yes, and I suppose part of that moral restraint is the knowledge that the President will probably act if they don't toe the line.

Mr. CURTIS. The act does not say that, does it?

Mr. BIDDLE. No.

Mr. CURTIS. Then, your seizure wasn't under the Smith-Connally Act?

Mr. BIDDLE. Certainly. It was under section 3 of the Smith-Connally Act. We have been talking about that all day.

Mr. CURTIS. Now, did you also state in that connection:

Section 7 of the War Labor Disputes Act ratified and confirmed Executive Order 9017 without changing the nature of the Board's function or the effect of its order.

Do you agree with that?

Mr. BIDDLE. I think I have stated that the act added the subpoena power, and also added the right of the Board to take it up on its own motion.

Mr. CURTIS. Also I find this statement:

It is clear that Board orders under the War Labor Disputes Act as well as those under Executive Order 9017 are self-enforced and do not fix or alter the legal rights of the parties.

Do you agree with that?

Mr. BIDDLE. Yes. You see, I did not write that brief. It is new to me. I don't know what that "self-enforcing" would mean. I suppose it means enforcing within the Board and not the court. Wouldn't that be your interpretation?

Mr. CURTIS. No. It is my contention that the War Labor Board was set up to try to get the parties together.

Mr. BIDDLE. Yes.

Mr. CURTIS. To make settlement, urge them to do it.

Mr. BIDDLE. Yes.

Mr. CURTIS. And submit the case to the court of public opinion.

Mr. BIDDLE. That is right.

Mr. CURTIS. And that is all. It is also my contention that the only power to seize under the Smith-Connally Act is as specifically stated in section 3.

Mr. BIDDLE. I think there is no question about that, that the only power to seize is under section 3.

Mr. CURTIS. Now, if it was, as you contend that the jurisdiction of the War Labor Board was no broader than the jurisdiction of the President to seize under section 3, do you think such a bill would pass the Congress?

Mr. BIDDLE. That isn't my contention. My contention is that both the sections were covered by the same test.

Mr. CURTIS. You stated that your staff had read the Congressional Record at the time this section was passed. I take it you observed the votes, the voting of the various members, on the bill?

Mr. BIDDLE. Yes.

Mr. CURTIS. Is it your opinion that the Congress intended at that time to grant to the President the authority to seize property of the nature of Ward's in Chicago or any retail establishment or retail house?

Mr. BIDDLE. It is.

Mr. CURTIS. It is your opinion that such an act would be passed by Congress?

Mr. BIDDLE. No; it is my opinion that such an act did pass Congress.

Mr. CURTIS. Mr. Biddle, what did the Government do while in possession of Ward's besides hold an election?

Mr. BIDDLE. Well, I don't think we did very much. You had better ask Mr. Taylor when he comes. I think certain grievances were taken up. Or at least they were discussed. I, not being an operating man, don't know much about it. We talked to some of the bookkeepers and asked if they would let us have the books. Posters were put up all over the place saying that the Government had taken over.

Mr. CURTIS. As far as getting the parties together, all you did was hold an election, isn't that true, getting labor and management together?

Mr. BIDDLE. Well, I tried my persuasive best to have the Government and Mr. Avery get together.

Mr. CURTIS. Isn't it true that the management at Ward's contended for months and months that they wanted an election?

Mr. BIDDLE. Yes, sir.

Mr. CURTIS. The purpose of a seizure under section 3 is to continue operations, is it not?

Mr. BIDDLE. Yes.

Mr. CURTIS. You do not contend that seizure is for the purpose of punishment?

Mr. BIDDLE. No. It may have that effect, of course.

Mr. CURTIS. If it is not for the purpose of punishing, then why did you allege in your paper submitted to the committee this morning such matters as these:

It's—

meaning Ward's—

insistence that it was entitled to carry on its own economic war within the country while the country was fighting its external enemies abroad?

Mr. BIDDLE. Why did I put that in?

Mr. CURTIS. Yes.

Mr. BIDDLE. I was trying to show to the committee the effect of Ward's position in dealing with this crisis. Now, I thought that that was a very serious thing. If Ward was allowed to go on using its economic power in this case, I thought that was a very serious challenge to the basic machinery that had been set up by the Congress, and therefore was very relevant in considering whether a crisis existed under which the President had to act, and I assume this committee is interested in whether that crisis did exist so as to know whether or not they think the President was justified.

Mr. CURTIS. You are not contending that Ward's is a bad boy and should be punished?

Mr. BIDDLE. No, no, certainly not; nor am I contending that he was not a bad boy.

Mr. CURTIS. Now, you do not contend that if there were labor troubles at Ward's in Kansas City that the seizure of Ward's Chicago properties would assure continuance of operation in Kansas City?

Mr. BIDDLE. No; but I contend that if the order of the Board was not enforced that that would necessarily spread into other companies, as it did, particularly in the *Hummer* case. My opponent argued very much the way you are talking, that the mere prophesy of the strike, spreading in other divisions was absolutely irrelevant, and we couldn't guess, and that very day the men walked out.

Mr. CURTIS. But it was because of a grievance at Hummer and not because of a grievance at Chicago?

Mr. BIDDLE. Yes; and the same type of grievance, as I remember, maintenance of membership.

Mr. CURTIS. But it was a grievance down there and not at Chicago?

Mr. BIDDLE. Yes.

Mr. CURTIS. As a matter of fact, since the declaration of war sympathy strikes in the United States have dropped down to almost nothing; isn't that true?

Mr. BIDDLE. Yes. I think it is a great tribute to Mr. Davis' Board that that is the situation. I think that is true.

Mr. CURTIS. The question of sympathy strikes is not a problem in the United States, has not been since the declaration of war; is that your statement?

Mr. BIDDLE. No; that is not true. Your sympathy strikes are on the horizon, and the minute this arbitration machinery breaks down that question would be above the horizon again.

Mr. CURTIS. We were furnished information to the effect that in 1943, of the total man-hours lost by strikes in the United States, less than one-tenth of 1 percent were sympathy strikes.

Mr. BIDDLE. In this case, at least, the truckers wouldn't cross the picket line—which was a sympathy strike.

Mr. CURTIS. Isn't it true that during all this trouble at Wards orders were filled and sent out and customers were satisfied?

Mr. BIDDLE. Oh, yes. You mean while we were in, or before?

Mr. CURTIS. While you were in.

Mr. BIDDLE. Oh, yes; we did everything.

Mr. CURTIS. And before, too.

Mr. BIDDLE. And before, too. I don't know if many were interfered with or not, of course. For a while deliveries were interfered with during the strike.

Mr. CURTIS. That was during the time of the picket line. I mean they had some added difficulty because the Government took out the post-office employees; isn't that true?

Mr. BIDDLE. Oh, no. The Ward trucks had been sent up to get the parcels and they refused to go. The contractors for Ward, the truckers, wouldn't go and get them, and when there was nothing to do for those few days the postmaster would not allow his men to stand around with nothing to do.

Mr. CURTIS. You have no knowledge that any orders went unfilled at Wards, do you?

Mr. BIDDLE. Went unfilled—I don't. The strike was interfering with the deliveries. I don't know if they were eventually unfilled.

Mr. CURTIS. You don't have any facts as to any farmers who ordered agricultural equipment and didn't get it?

Mr. BIDDLE. No. Referring to the fact that the picket line was holding up deliveries from 10 days, from that one would be safe in assuming that the orders were not filled during that period.

Mr. CURTIS. Mr. Biddle, I tried to follow you in what you said about taking property for a public purpose. Do you contend that the taking of Wards was for a public purpose?

Mr. BIDDLE. Certainly, I do.

Mr. CURTIS. For what purpose did the Government use it?

Mr. BIDDLE. To operate the plant. You mean, what was the public purpose? Is that your question?

Mr. CURTIS. Yes.

Mr. BIDDLE. To operate the plant.

Mr. CURTIS. The Army or the Navy didn't use this building for offices or for an arsenal or for a warehouse?

Mr. BIDDLE. It was to prevent the interruption of the operation of Montgomery Ward by strikes.

Mr. CURTIS. But isn't it true, Mr. Biddle, that what is generally referred to as taking property for public purposes means that the Government, at least for a period of some little time, wants to use that property for governmental business?

Mr. BIDDLE. Would you say that applied to taking the coal mines, for instance?

Mr. CURTIS. I am not sure that they took the coal mines for public purposes. But I am asking you.

Mr. BIDDLE. I think it is a public purpose to keep our boys supplied, and the factory supplied.

Mr. CURTIS. To take somebody's plant to make a product; that is for a public purpose?

Mr. BIDDLE. Yes.

Mr. CURTIS. And to take their land for an airfield; that is a public purpose?

Mr. BIDDLE. Yes.

Mr. CURTIS. To take a hotel for the Army; that is a public purpose?

Mr. BIDDLE. Yes.

Mr. CURTIS. In that sense, was Ward's taken for a public purpose?

Mr. BIDDLE. Not in that sense; no.

Mr. CURTIS. The Government never made use of it for any governmental purpose, did it?

Mr. BIDDLE. Yes; very definitely. I thought I had pointed that out.

Mr. CURTIS. What Government agencies used the building and facilities and the material and merchandise in there?

Mr. BIDDLE. The Secretary of Commerce was the Government agency that was operating under the Executive order.

Mr. CURTIS. Yes; but for what governmental purposes did they use either the building or the merchandise?

Mr. BIDDLE. Kept it operating. I think it is a very important public purpose to keep these great organizations operating today and supplying the necessary goods.

Mr. CURTIS. What I am trying to find out is whether you distinguish between the taking of property to be used for governmental purposes and the taking of property as was done in the *Ward case*.

Mr. BIDDLE. Under the provisions of the fifth amendment?

Mr. CURTIS. Yes.

Mr. BIDDLE. I do not.

Mr. CURTIS. Or under any other law?

Mr. BIDDLE. My whole discussion was as to the fifth amendment, that the Government can only take property for public purpose under that amendment, and that is the question we are interested in. It is the fifth amendment we are looking at. The whole basis of Montgomery Ward's argument was under the fifth amendment. That is what we have to meet here.

Mr. CURTIS. Now, you made reference to the case of *United States v. Russell*.

Mr. BIDDLE. Yes, sir.

Mr. CURTIS. In that case the property seized was steamboats, wasn't it?

Mr. BIDDLE. Yes.

Mr. CURTIS. During, I believe, the Civil War?

Mr. BIDDLE. Yes.

Mr. CURTIS. And the purpose of the seizure was that steamboats were needed in military operations; wasn't it?

Mr. BIDDLE. No. As I remember, the purpose of the seizure was that those steamboats were needed to transport certain materials for military operations.

Mr. CURTIS. That is what I mean.

Mr. BIDDLE. Yes. Just the way trucks might be needed here to transport goods.

Mr. CURTIS. Now, the other Supreme Court case that you relied upon for your general power was *Mitchell v. Harmony*. That is a case that arose during the Mexican War, isn't it?

Mr. BIDDLE. Yes.

Mr. CURTIS. That was a case where a peddler had a wagon, or a caravan, drawn by mules, and he followed an American Army officer, I believe it was a Colonel Mitchell, in an expedition into Mexican territory.

Mr. BIDDLE. Yes.

Mr. CURTIS. And during the course of that expedition, the officer decided that he needed the wagons and the mules and the equipment for use of the Army; isn't that true?

Mr. BIDDLE. I don't remember the precise reasoning. Mr. recollection is that the Army officer decided that he didn't want that man trading behind the lines. I don't think he needed the mules.

Mr. CURTIS. I thought he made a contention in that regard.

Mr. BIDDLE. No; my recollection is that he didn't want that service going on, and the Court held that the man had a perfect right to trade behind the lines; that this was no great emergency.

Mr. CURTIS. But it is true that the officer in that case commandeered Mitchell's property?

Mr. BIDDLE. I think he just kept Mitchell out; prevented him from trading. The question was as to the appropriate instructions to the jury, which the Court had to decide, and I think the Court emphasized that an emergency must exist before the power, which undoubtedly existed, can be exercised, and must be an emergency, just as I have said all day, and, of course, with due payment, compensation.

Mr. CURTIS. You are familiar with the case entitled "*Ex parte Quirin*," recently decided in the Supreme Court, involving the saboteurs on Long Island?

Mr. BIDDLE. Yes; I tried the case and argued it.

Mr. CURTIS. Do you concur with what the Court said as to the war powers of the President in that decision?

Mr. BIDDLE. Well, it is a very long decision. I think that is a fairly big order. I don't think it is appropriate for the Attorney General to say that he doesn't concur with what the Supreme Court said. I am not quite sure what sentence you have in mind.

Mr. CURTIS. I shall read a little bit from it.

Congress and the President, like the courts, possess no power not derived from the Constitution.

Mr. BIDDLE. Right; I concur.

Mr. CURTIS (reading):

But one of the objectives of the Constitution, as declared by its preamble is to "provide for the common defense." As a means to that end, the Constitution gives to Congress the power to "provide for the common defense," to raise and support armies, "to provide and maintain a navy," "to make rules for the Government and regulation of the land and naval forces". Congress is given authority "to declare war, grant letters of marque and reprisal and make rules concerning captures on land and water," and "to define and punish piracies and felonies committed on the high seas and offenses against the law of nations." And finally the Constitution authorizes Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

The Constitution confers on the President the "executive power," and imposes on him the duty to "take care that the laws be faithfully executed." It makes him the Commander in Chief of the Army and Navy, and empowers him to appoint and commission officers of the United States.

The Constitution thus invests the President as Commander in Chief with the power to wage war which Congress has declared, and to carry into effect all laws passed by Congress for the conduct of war and for the government and regulation of the armed forces, and all laws defining and punishing offenses against the law of nations, including those which pertain to the conduct of war.

Mr. BIDDLE. Yes. I think that is an admirable statement of what the Constitution provides, and I concur entirely.

Mr. CURTIS. Now, reference has been made to the *Milligan case*. In that case we find this paragraph, and I quote:

The Constitution of the United States is law for rulers and people equally in war and peace and covers with the pale of its protection all classes of men at all times and under all circumstances. No doctrine involving more pernicious intent was ever invested by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

Do you agree with that statement?

Mr. BIDDLE. I concur entirely in that. I don't think that just because there is a war you can suspend the Constitution. I thought I made myself very clear on that. You have to treat men all alike. You have to treat Avery and John L. Lewis alike under the Constitution.

Mr. CURTIS. I was interested in your definition of the word "production." Do you contend that a sale of merchandise is production?

Mr. BIDDLE. I contend that the word "production" as used in this act covers the sale of merchandise and all the processes in the general industrial field.

Mr. CURTIS. I am confining my question to the matter of selling by itself—with no other transaction involved. Do you consider selling "production" in that respect?

Mr. BIDDLE. You mean as "production" is used in this statute?

Mr. CURTIS. There is no definition of "production" in this act.

Mr. BIDDLE. No.

Mr. CURTIS. The word "production" with its so-called broad interpretation was something that you presented. I am talking about the general accepted meaning of the word "production." Would you include selling?

Mr. BIDDLE. It is used in a great many different ways under a great many different statutes. I can't talk now generally. I have got to confine myself to context, the context in which it is used. If you are asking me how it is used here, I have been testifying about that all day, and I can go over it again, but I can't guess as to how it is used in another act or in another context.

Mr. CURTIS. I am asking about the ordinary meaning, whether or not you regard selling as production, under the ordinary meaning.

Mr. BIDDLE. As used in this statute, I think it would cover it.

Mr. CURTIS. Do you contend buying is production?

Mr. BIDDLE. No; I don't think buying is production.

Mr. CURTIS. The seller might be engaged in production but the buyer is not?

Mr. BIDDLE. I don't know what you mean, what transaction, under what circumstances.

Mr. CURTIS. I am speaking generally.

Mr. BIDDLE. Could a seller be engaged in production?

I don't quite understand.

Mr. CURTIS. No; just by the mere act of selling.

Mr. BIDDLE. What is the question, sir?

Mr. CURTIS. As I understood your answer to my question whether the act of selling was production, it was "Yes."

Mr. BIDDLE. Under this section.

Mr. CURTIS. Now, I am not talking about this section, I am talking about the general meaning of the words.

Mr. BIDDLE. I can't tell you about the general meaning.

Mr. CURTIS. As a matter of fact, you know that buying and selling is not considered production, don't you?

Mr. BIDDLE. It would depend on how it was done and how the word was used. If you say: Is production the same as selling? it obviously is not, nor is buying the same as selling. Of course, it is not the same. That isn't the question. The question here is: Is the word "production" broad enough to cover these activities. So, why bring in something that has nothing to do with the issue?

Mr. CURTIS. You have come in with a novel and unusual and, as far as I am concerned, an unheard-of definition of "production," and I would like to know whether or not you feel that buying and selling is production.

Mr. BIDDLE. Of course, it is not production, but it isn't very novel; if you look at section 8 you will see that "production" covers "selling."

Mr. CURTIS. Do you contend that wrapping up a finished article after it is sold is production?

Mr. BIDDLE. I shouldn't think so.

Mr. CURTIS. Do you contend that storage of a finished article constitutes production?

Mr. BIDDLE. Certainly under this act storage of a finished article—certainly I think that comes very close to it. First, a thing is manufactured. Obviously, "production" isn't the same thing as "manufacturing" because that is another word in the section. The next step is to put that thing away in a warehouse. I think that is production. That is a very good illustration—very definitely. Warehousing, it seems to me, can be part of the normal process of production.

Mr. CURTIS. Is the receiving of cash and the making of change in connection with a sale, production?

Mr. BIDDLE. I should hardly think so, would you?

Mr. CURTIS. Would book work, such as recording sales and orders, be production?

Mr. BIDDLE. I think that might safely be called production. You have to look at the context. You can't generalize. I think recording of production would be part of the process just the same way that warehousing is part of the general process of production.

Mr. CURTIS. To your knowledge did Wards ever refuse to obey an order of the War Labor Board with respect to rates of pay?

Mr. BIDDLE. I really don't know. You would have to ask Mr. Davis that.

Mr. CURTIS. You don't know that they did?

Mr. BIDDLE. I don't know.

Mr. CURTIS. Nor with respect to the hours people should work?

Mr. BIDDLE. I don't know.

Mr. CURTIS. On page 22 of your statement I find this sentence:

It was unfortunate that one of the consequences of this action was to make the court case moot and thus prevent a decision on the legal question involved.

Isn't it true that the case was continued a time or two on the application of the Government?

Mr. BIDDLE. No, I don't think the case was continued on application of the Government. That has been stated several times by Ward, with inaccuracy each time. As I remember what occurred, it was that the judge at first said he would render a decision on a certain day, and then, I believe, say, as briefs had been filed, he wanted time to consider, and I think he moved it from Monday to Wednesday, and then Ward's attorney said, having filed a supplemental brief and we having filed a supplemental brief, that it should be moved back to the original day. I wasn't there at the time. The United States attorney represented us. And I think the court said no, that he wanted an opportunity to read these briefs, and the United States attorney said, "Since Ward has filed a supplemental brief, I think that Your Honor ought to take time to read our supplemental brief, too." There was never any motion made to the court, when I was there, and I was there whenever the case was argued, to continue the case. The case was decided with extraordinary speed, as a matter of fact. I think the judge was very, very prompt in making a decision.

Mr. CURTIS. You are referring to the United States Judge Holly?

Mr. BIDDLE. Yes. Well, he decided the case was moot.

Mr. CURTIS. But it is true that in the eleventh hour, before the case was to be heard, the Government surrendered the plant, and even before.

Mr. BIDDLE. I don't know what you mean by the eleventh hour. From the beginning, all of us, who discussed this case, had decided that the Government would not be justified in staying in that plant a moment after the election was finished. I do not know what you mean by the eleventh hour: As soon as the election took place, and, as I remember, the election was on Tuesday; as soon as that took place, we abandoned the plant.

Mr. CURTIS. That is all.

The CHAIRMAN. In any event, Mr. Attorney General, whenever the Government left the plant and turned it back to Ward the case would have been moot and no appeal could be had?

Mr. BIDDLE. Yes. And if we had left it a week later or 2 weeks later.

The CHAIRMAN. In other words, if Judge Holly had decided the case on Wednesday—

Mr. BIDDLE. In our favor, let us say.

The CHAIRMAN. Yes; and the Government had stepped out on Thursday, no appeal could be taken by Ward.

Mr. BIDDLE. That is right.

The CHAIRMAN. Or if he decided against the Government, no appeal could be taken by the Government.

Mr. BIDDLE. The same thing; yes.

The CHAIRMAN. Now, Mr. Curtis has asked you about the *Russell* case. Isn't it true that the Government in this war has requisitioned practically every ship owned by any of the shipping companies in the country?

Mr. BIDDLE. Yes. I think under statutes, Mr. Chairman.

The CHAIRMAN. And they have turned them back to the shipping operators to operate under the orders of the Government?

Mr. BIDDLE. Yes. I think some of them may have been seized before the statute, but in any event the constitutional question is the same as when it is done under a statute.

The CHAIRMAN. It is also true that the Government has taken over hundreds of hotels, office buildings?

Mr. BIDDLE. Yes.

The CHAIRMAN. As you have pointed out, they have taken farm land and other property for the purpose of the war.

Mr. BIDDLE. And without any decision of the courts.

The CHAIRMAN. Yes.

Mr. BIDDLE. Just walk in and file it. The minute we step in we are there.

The CHAIRMAN. They have even taken over office space and made people move out that had leases.

Mr. BIDDLE. Yes.

The CHAIRMAN. I know that has happened in my own district.

Mr. BIDDLE. Well, this is war, Mr. Chairman.

The CHAIRMAN. Yes. A lot has been said about the purpose of this seizure, whether it was a public purpose or not.

Do you think it is good public policy to stop a labor dispute in time of war?

Mr. BIDDLE. I think it is fundamental.

The CHAIRMAN. Isn't that the whole purpose of this act that we are talking about here, to stop labor disputes?

Mr. BIDDLE. Yes; in order to continue operation.

The CHAIRMAN. The legislative history of the act, the discussion on the floor of the Senate and the House, showed that the thing in the minds of the Members of the Congress was to stop strikes in time of war; isn't that correct?

Mr. BIDDLE. That is correct.

May I suggest, Mr. Chairman, coming back to what I ended my formal statement with, with regard to the amending of this statute. I think the statute is, as I have said, sufficient warrant for our action. If there is doubt, it should be amended, because if it is not amended Congress, I think, by failing to amend it, will approve what we have done.

The CHAIRMAN. Now, what importance, Mr. Attorney General, do you attach to the resolution declaring war in which Congress said that we pledged the entire resources of our country?

Mr. BIDDLE. Well, let me answer that in two ways. First, that no property is unaffected by the war, and, secondly, that Judge Chesnut recently in Baltimore, a district judge, construing that clause said that irrespective of the statute, that pledge in the declaration of war gave the President the right to take property involved, irrespective of the statute.

The CHAIRMAN. Of course, that is an act of Congress.

Mr. BIDDLE. That is an act of Congress.

The CHAIRMAN. It is a law.

Mr. BIDDLE. Yes. In other words, by your act you pledge Mr. Avery's property to the use of all of the country.

The CHAIRMAN. That is my view of it.

We have had a good deal of talk about whether the President had authority to do this or to do the other. History teaches us, if I remember my history correctly, that every President who served during time of war used whatever means were needed to win the war. Lincoln did a lot of things that the statutes hadn't specifically provided for. Wilson did a lot of things that the statutes hadn't specifically provided for, and, likewise, the present President has had to take some actions which perhaps were not sufficiently spelled out in the language of any statute. So that there is nothing different between the situation we have today and the situation we have had in other wars, as I see it.

Mr. BIDDLE. I refer you to the book of Mr. George V. Milton, which has just been published, in which he concludes that of the war Presidents, President Roosevelt has exercised these powers not specifically spelled out, as you so well put it, less than any of the other Presidents.

The CHAIRMAN. As a matter of fact, there were more than 2,000 sedition cases brought by the Government in the last war as compared with less than 100 in this war.

Mr. BIDDLE. Yes. And I think President Lincoln made more than 70,000 arrests without statutory authority.

The CHAIRMAN. Somebody said a while ago that the Constitution was still the same. It certainly is not the same as it was before the Civil War.

Mr. Attorney General, it happens that I served for 4 years as deputy United States marshal. There has been some discussion here about the use of the United States marshal. It may be true that the United States marshal can carry out an order of a court without a writ, but as a general rule and as an almost invariable practice a marshal is used to serve writs on orders of the court, isn't he?

Mr. BIDDLE. Yes, sir. Were you a marshal or a deputy?

The CHAIRMAN. I was a deputy marshal.

Mr. BIDDLE. You as a deputy never had an Executive order.

The CHAIRMAN. No.

Mr. BIDDLE. That might have made a difference.

The CHAIRMAN. The truth about this marshal business is that they were used out there in Chicago in the hope that that show of authority would persuade Mr. Avery to obey the order of the President, the Commander in Chief; isn't that true?

Mr. BIDDLE. It was supposed to be a friendly token.

The CHAIRMAN. And he advised the Government officials that that was not sufficient force.

Mr. BIDDLE. Yes.

The CHAIRMAN. Which leads me to the conclusion that he wanted to be carried out by the Army.

Mr. BIDDLE. I wish you would ask him that.

The CHAIRMAN. I will when he gets here.

Mr. Attorney General, there has been a good deal of discussion here today about the history of this act, the legislative history. All of us in this committee had something to do with that history, I think, and all of us voted on it. Some of us participated in the debate on it. I remember that my colleague from Nebraska, Mr. Curtis, made a speech on that occasion in which he quoted Alexander Hamilton about this power of the President to do whatever was necessary to be done—something to that effect. The thing I was getting to is this: In the

House this bill, as it passed the House, was the Harness-Smith bill. For some reason, I don't know why, Mr. Harness' name does not appear in the bill very often, but he had a good deal to do with it. As I recall the Harness substitute, which was adopted in the Committee of the Whole, in section 7 of that substitute, while no authority was conferred upon the President to seize any property, there was language in there which recognized his right to seize the property.

Do you happen to have a copy of the Harness substitute there?

Mr. BIDDLE. Yes; I think so.

The CHAIRMAN. I would like you to read the first sentence of paragraph 7 of the Harness substitute.

Mr. BIDDLE (reading):

Mr. HARNES of Indiana. Section 7 of my substitute provides as follows: "When possession of any plant, mine or other property has been or is hereafter taken by the Government under authority of section 9 of the Selective Service and Training Act of 1940, as amended or otherwise—"

The CHAIRMAN. That is far enough.

Mr. BIDDLE. The only "otherwise" is taking without statute by reason of a strike, lock-out, threatened strike, threatened lock-out, work stoppage, or other cause.

Such a plant, mine or other property shall be returned to the owners thereof as soon as practicable, but in no event for 60 days after the termination of the conditions which caused the possession of such plant, mine, or other property to be so taken.

The CHAIRMAN. As I recall it, the House passed that section of the Harness substitute as the House bill. So, so far as the legislative intent of the House was concerned, they intended to recognize the power of the President to seize property to stop labor disputes.

Mr. BIDDLE. That is true, and in the section which eventually found itself in the act, it is very clear that two kinds of possession are recognized by the statute. Possession taken under section 3 and possession taken by the Government.

The CHAIRMAN. As stated a while ago the whole purpose of this act was to stop labor disputes during the war, and, of course, it was compromised, as all legislation is. Section 3, as I construe it, simply confers some additional power on the President over and above and beyond the power he had previously been given in section 9 of the Selective Training and Service Act. The language of it, as I see it, does not in any way limit any power he might have had. It simply added to the power in section 9 of the Selective Service Act. And under section 9 he has authority to take any property when the Government needs it for use in the war effort, hasn't he?

Mr. BIDDLE. Yes.

The CHAIRMAN. So that that power was supplemented by this addition to it.

Now, the definition of war contracts does not in any way relate to section 7 of the act, does it?

Mr. BIDDLE. No. I don't think section 7 involves war contracts.

The CHAIRMAN. In section 7 the term "war contract" is not mentioned at all; is it?

Mr. BIDDLE. No.

The CHAIRMAN. And I take it that it is your opinion, that is what I have understood from your testimony, that section 7 does confer power, and not only power but the duty on the Labor Board, wherever the

Conciliation Service certifies a case to them to get all the facts and to issue an order and in that order set out the conditions of employment in the plant.

Mr. BIDDLE. That is correct, sir.

The CHAIRMAN. In other words, it is compulsory arbitration.

Mr. BIDDLE. That is right.

The CHAIRMAN. Without taking the final step of authorizing the enforcement of the arbitration in the courts?

Mr. BIDDLE. Yes, precisely as the Transportation Act.

The CHAIRMAN. So that when the War Labor Board on January 15 of this year ordered Montgomery Ward and the union to maintain the status quo, they were acting in accordance with the duty put on them, were they not?

Mr. BIDDLE. That is right.

The CHAIRMAN. Now, there has been a good deal said about this election and why they didn't hold the election. Of course, the election could have been gotten much sooner if Montgomery Ward had complied with the order of the War Labor Board, could it not?

Mr. BIDDLE. At once.

The CHAIRMAN. The union did comply with the order of the President to go back to work after the Board had certified the case to the President?

Mr. BIDDLE. Yes.

The CHAIRMAN. Montgomery Ward did not.

Mr. BIDDLE. Refused to.

The CHAIRMAN. As a matter of fact, it never voluntarily complied with any order of the War Labor Board or the President in this whole case from 1942 down to date?

Mr. BIDDLE. Well, after the President sent a telegram to them in 1942, telling them, requesting them to comply with the War Labor Board order, they finally did, but they wanted a clause put in that they were only doing it under duress. Of course, the War Labor Board wouldn't agree. They finally did comply with the President's order at that time.

The CHAIRMAN. I believe that is all. Mr. Elston.

Mr. ELSTON. I have a couple of questions.

First, about the Harness amendment. I just want to say that Mr. Harness' own statement in the House indicated that the amendment did not cover as much territory as the chairman indicates. I happen to sit next to Mr. Harness on the Military Affairs Committee, in which committee the amendment was discussed, and to know that Mr. Harness did not intend that the amendment was to cover everything except the plants, mines, and facilities mentioned in section 3.

Now, just a question or two, Mr. Biddle.

Mr. BIDDLE. Yes, sir.

The CHAIRMAN. May I interrupt to ask you a question, Mr. Elston?

Mr. ELSTON. Yes.

The CHAIRMAN. How could you discuss section 3 when it was written in conference?

Mr. ELSTON. I mean that we talked about the substance of it.

I want to ask you this, Mr. Biddle:

Since your case in Chicago was dismissed, do you know of any way at all under existing law that the Montgomery Ward & Co. can have any court decide the propriety and the legality of the seizure of their properties in Chicago by the Government?

Mr. BIDDLE. Yes; they could sue for compensation. I suppose that compensation would depend on whether or not the Government's possession was appropriate or whether Montgomery Ward's possession was appropriate.

Mr. ELSTON. Well, if they sued for compensation only, they would be entitled to compensation whether the seizure was legal or illegal, wouldn't they?

Mr. BIDDLE. I think the extent of the compensation might differ. I think that the question could be raised in such a suit.

Mr. ELSTON. Well, the sole question in that kind of a suit would be the value of the property that they lost, so under those circumstances, it would not make a particle of difference whether the seizure was legal or illegal, unless there would be some penalty added for illegal seizure, and I don't know of any.

Mr. BIDDLE. An illegal seizure might result in damages, whereas if the thing was done legally, the damages might not flow from it.

Mr. ELSTON. Well, any seizure of property by the Government, for the most appropriate purpose in the world, gives rise to a suit for damages if the parties cannot get together and agree upon the amount.

Mr. BIDDLE. No. If the damages result from a legal act of the Government, the Government would not be responsible.

Mr. ELSTON. Well, that would simply be a defense that the Government would make in the claim for damages.

Mr. BIDDLE. A good defense if they prove it.

Mr. ELSTON. But you know of no way that they can have decided the sole question of the legality of this seizure, do you?

Mr. BIDDLE. Well, I think it may come up again, and then they go into court and ask for an injunction.

Mr. ELSTON. Well, you are anticipating it might happen again. If it does not happen again, there is no way they can have it determined.

Mr. BIDDLE. Naturally not, excepting the way I have suggested.

Mr. ELSTON. For the purpose of clarifying something that came up this morning, may I ask this: I believe you stated this morning, when I was asking you who passed on the essentiality of any seizure, who passed on the necessity for taking property, you said it was the President. However, you did say the courts had something to do with it. Now, when you argued your case in Chicago, and you filed a brief up there, you made this contention in your brief, didn't you:

In time of war the courts will not substitute their judgment for that of the President or review his determination.

Mr. BIDDLE. That is right.

Mr. ELSTON. "As to the gravity of the emergency."

Mr. BIDDLE. As to the gravity of the emergency.

Mr. ELSTON. Let me finish.

As to the gravity of the emergency or the necessity of the taking of the particular property.

Mr. BIDDLE. That is right. But they will sometimes review it to see whether the President was unreasonable or arbitrary. In other words, if it was obvious that the taking had nothing to do with a public purpose, the courts would say the President is acting illegally. On the other hand, if the emergency did not exist and the President arbitrarily said it did, the courts would always review that.

Mr. ELSTON. That is not what you say here. You say that the courts will not substitute their judgment.

Mr. BIDDLE. That is right.

Mr. ELSTON. Or review his determination as to the gravity of the emergency.

Mr. BIDDLE. That is right.

Mr. ELSTON. Or the necessity of the taking of the particular property.

Mr. BIDDLE. That is right.

Mr. ELSTON. Doesn't that mean just what it says, that if the President determines the emergency is grave, whether it is or not, if he determines it that way, the courts have no power to review his judgment, and on the other hand if he says it is necessary to take the property, in his opinion, the courts have no authority to review his decision that it was necessary? Isn't that exactly what you say here?

Mr. BIDDLE. Well, I thought I had made that point clear. Let me go over it again. I said they won't substitute their judgment as to the gravity of the emergency. Now, if that emergency does not exist, of course, they will review his judgment, but they will not substitute their judgment on the decision as to the extent of the gravity. That is true in all these administrative decisions. In all these requisition proceedings, the courts will never say, "We will substitute our judgment and say that in our opinion this property is the kind of property that is not needed for the Army." The Army must determine that. But they will always review the President's action, or the action of the Government, in requisition or in seizing, to determine whether the discretion was arbitrarily exercised.

Mr. ELSTON. Well, Mr. Biddle, if the courts cannot substitute their judgment for what the President considers to be an emergency, what the President considers to be necessary, and the President has power to act irrespective of any law of Congress, the President, himself, makes the decision and there is no review.

Mr. BIDDLE. I do not agree with anything you said in that last statement.

Mr. ELSTON. All right. Let us take it piecemeal.

You say, first of all, that the President has the power to seize property notwithstanding any action of Congress or any failure of Congress to pass legislation.

Mr. BIDDLE. Yes; if he does it under the requirements of the Constitution of the United States.

Mr. ELSTON. So Congress is clear out of the picture, the President has the power without regard to Congress?

Mr. BIDDLE. Well, he is doing it under this statute, and he also has the power where an emergency exists.

Mr. ELSTON. But you also say that notwithstanding the War Labor Disputes Act, the President has the power to act under the Constitution as Commander in Chief?

Mr. BIDDLE. Yes; in an emergency.

Mr. ELSTON. So Congress is clear out. The President can act without Congress, can't he?

Mr. BIDDLE. In an emergency.

Mr. ELSTON. In what he says is an emergency.

Mr. BIDDLE. Subject to the courts' review.

Mr. ELSTON. Yes; in what he says is an emergency.

Mr. BIDDLE. Subject to the courts' review.

Mr. ELSTON. Subject to the courts' review on solely the question of whether there is any emergency at all?

Mr. BIDDLE. Yes.

Mr. ELSTON. But the President is the sole judge of the gravity of the emergency, and he is the sole judge of the necessity for the taking, according to your argument.

Mr. BIDDLE. Certainly not. The court reviews this thing. The courts say: Does the emergency exist? They look at the evidence that the President has before him and say: Although we are not going to substitute our judgment for the President's judgment, nevertheless if he acted arbitrarily, we will grant the injunction and say to the President that he went beyond his constitutional powers." The courts always do that.

Mr. ELSTON. Well, if the courts cannot review as to the gravity of the emergency, or the necessity of the taking, and Congress is clear out of the picture, it just about means that the President can seize any kind of property he wants to.

Mr. BIDDLE. No; he cannot.

Mr. ELSTON. Just so long as he concludes that it is of some value in the prosecution of the war.

Mr. BIDDLE. Not at all, not at all. The courts will not simply jump to conclusions. The courts will look at all the circumstances, and they will say: "Do these circumstances show that the President was arbitrary?" If they think he was, they will enjoin him.

Mr. ELSTON. Well, that seems to be contrary to your statement in your brief, but if that is your explanation, there is nothing we can do about it.

Mr. BIDDLE. Well, I don't agree.

Mr. ELSTON. Just one more question. In these appropriations of property to which the chairman referred, by President Lincoln and by President Wilson, you found on investigation, did you not, that in virtually all those cases, in fact, in all of them, if the seizure was without legislative authority, the President immediately asked for it and got it?

Mr. BIDDLE. No. In one case, in President Lincoln's case, the Government got a statute after the property had been seized. In another case that I cited, the *Smith & Wesson case*, he did not.

Mr. ELSTON. With those two exceptions. Of course, I grant you that the President may have to act quickly in some cases, as President Lincoln did, I believe, on one occasion, but he immediately came to Congress and asked for the authority confirming his act.

Mr. BIDDLE. Well, in one he did, and another one he did not.

Mr. ELSTON. Don't you take that as an indication that the Presidents recognized that they could only act by virtue of a law of Congress, unless they had to act quickly, and in those instances they came in and had their actions confirmed by Congress?

Mr. BIDDLE. I think where there is no act of Congress the emergency must be extreme. I take it that the reason the President goes to Congress, and I think it is obvious, the power in a war is in the hands of both the President and the Congress and they ought to coordinate as closely as possible; therefore, gentlemen, if there is anything that is doubtful it seems to me apparent that you should clarify it to foresee any emergency and to authorize the President in any way you want, or if you don't want him to act in an emergency, to say so.

Mr. ELSTON. Where Congress has spoken, as Congress has during this war through the War Labor Disputes Act, then the authority of the President is confined to the authority given him under that act?

Mr. BIDDLE. Certainly not. The act specifically recognizes, as I have said again and again, and as the chairman has said—recognizes the authority of the President to act outside of the statute and preserve it. So that when they have this section with respect to taking over possession, there are two kinds of possession in the act. They speak of possession taken under section 3 and they speak of possession taken by the act specifically, preserving that difference, and the legislative history and the act itself shows that Congress never meant to take away from the President his rights to act under an emergency. I think that is perfectly clear.

Mr. ELSTON. That is all.

The CHAIRMAN. Mr. Attorney General, just following up what Mr. Elston has been talking about, I notice in this decision of Judge MacSwinford, in the Ken Rad Tube & Lamp Corporation, where he had pending a proceeding for an injunction against an Army official who had taken possession under order of the President, the judge says this, which seems to me to be in direct line with your testimony:

It is my judgment that this case, and all others like it, may be reduced to a simple formula: Did the President act arbitrarily in ordering the facilities to be taken over by the Army? Proof that he did so act shall be upon him who asserts it.

If this seems to be an extreme view, it should be called to the attention of those who so claim that, with the country at war, fighting for its very existence, extremities are commonplace. No war hysteria should prompt the adoption of basically unsound legal reasoning; neither should blind complacency or a false sense of the country's security cause the court of the land to grant to those charged with preserving the Nation less than the full measure of constitutional and legislative authority.

The judge also held in that case this:

I do not think that the determination of this case depends upon whether or not the order of the War Labor Board was valid or invalid.

As I understand that decision, and I would like for you to correct me if I am not understanding correctly, he held that the President had authority even to disregarding the War Labor Board's action?

Mr. BIDDLE. Yes; or to put it differently, Mr. Chairman, he held that the President has authority to act on any information that he obtained, whether coming from the War Labor Board or not.

The CHAIRMAN. The committee will take a recess until 10 o'clock tomorrow morning.

(Whereupon, at 5:35 p. m., an adjournment was taken until 10 a. m., Thursday, May 25, 1944.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

THURSDAY, MAY 25, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to adjournment, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Ramspeck (chairman) presiding.

Present: Representatives Ramspeck (chairman), Byrne, Monroney, Dewey, Elston, and Curtis.

The CHAIRMAN. The committee will come to order.

The first witness this morning will be Mr. Cargill of the Post Office Department.

STATEMENT OF TOM C. CARGILL, DEPUTY FIRST ASSISTANT POSTMASTER GENERAL

The CHAIRMAN. Will you give the reporter your full name and your official position in the Post Office Department?

Mr. CARGILL. Tom C. Cargill, Deputy First Assistant Postmaster General.

The CHAIRMAN. How long have you been in the postal service Mr. Cargill?

Mr. CARGILL. I entered the postal service on September 1, 1921, Mr. Ramspeck.

The CHAIRMAN. Mr. Cargill, we would like you to tell us the story of the postal situation at the Montgomery Ward plant in Chicago, with special reference to the incident in which it is claimed that the postal employees working in that plant were withdrawn during the strike, during the controversy out there.

In the first place, I think we would like to know just why these men worked in that plant, what their arrangement was, any statement you want to make about that question.

Do you have a prepared statement?

Mr. CARGILL. Yes, sir.

The CHAIRMAN. All right.

Mr. CARGILL. I would like to make a statement as to the general policy of the Post Office Department, first, and give you an outline of the things that transpired out there, so far as we know here in the Department, and then if you want to ask any questions, I will be glad to elaborate on that.

The CHAIRMAN. All right.

Mr. CARGILL. From time to time efforts are made to involve the Post Office Department in labor disputes, usually because of the picketing of some industry. It now is believed advisable to state the long-established policy of the Post Office Department, which is a sound one and has met with general approval. The Post Office Department during a strike in any industry, and regardless of the fact that picket lines must be crossed, will continue to deliver the mail at the same points of delivery and in the same manner as before the strike. The Post Office Department, on the other hand, will not change its points of delivery, install different methods of delivery, increase deliveries, or increase the equipment or space to handle unusual quantities of mail because of a strike. It will preserve an attitude completely neutral, and will handle the mail in the same manner as before the strike.

This policy has been adopted even though, under the law, 39 U. S. C. 492, the Postmaster General has discretionary power to discontinue service entirely until postal activities can be safely restored.

This long-established policy was adhered to sedulously in the mail-handling operations in connection with the strike during April 1944 in the Chicago plant of Montgomery Ward & Co., as may be seen from the following data:

Almost 30 years ago it was determined to be mutually beneficial for both the Post Office Department and the Montgomery Ward Co. to have postal employees stationed in the company plant at Chicago to distribute parcels. It was a part of the understanding that the company would call at the post office for incoming mail, and also deliver to railway stations and to the post office outgoing mail from their plant.

The number of post-office employees assigned to work in the mail unit at the Montgomery Ward plant fluctuated as the volume of business required. On April 12, 1944, the date of the strike, there were approximately 75 postal employees so engaged.

On April 13, 1944, the Post Office Department in Washington was advised of the strike at Montgomery Ward Co. plant, and that Mr. Kirby, a representative of Montgomery Ward Co., had advised there were about 4,500 sacks of mail on hand that had been accepted by post-office employees and were awaiting transportation by the company contractor, but that their truck operators had refused to pass through the picket lines. This was a company problem, and Mr. Kirby asked for help in getting this mail dispatched. The dispatch of these 4,500 sacks was completed at 1:30 a. m. on April 14, 1944.

In accordance with the policy of permitting only such employees to remain on an assignment as are kept busy, and inasmuch as the customary routing of mail at the Montgomery Ward plant was disrupted, postal employees not necessary were withdrawn on April 13, 1944. Such postal employees as were required to protect accepted mail matter remained.

On April 14, 1944, the postmaster at Chicago advised that company trucks no longer operated and the firm had requested the post office to deliver by post-office trucks all returned matter in the Chicago post office to their plant. Consistently, following the well-established policy of the Department, the following message was sent to the postmaster [reading]:

Do not deliver returned mail by post-office trucks to Montgomery Ward & Co. plant. Give only postal service that has been accorded before strike.

On April 19, 1944, the following message was received from the postmaster at Chicago:

Montgomery Ward demands delivery to their plant of first-class mail. Heretofore, they called at main office for all first-class mail. Immediate telegraphic advice requested.

I dictated the following message to the postmaster:

Retel give only postal service to Montgomery Ward that has been accorded before strike.

The strike was called off during the evening of April 25. During the strike from two to four post-office employees remained at the plant to protect mail until dispatched, and also to supervise the precanceling of postage stamps, obtaining signatures for returned C. O. D. and insured mail, and the protection of postal revenues and equipment. Twenty employees resumed duties at Montgomery Ward postal units at 9:30 a. m. April 26, and the force has since been augmented as the needs required until the number of employees is now the same as before the strike.

That is the general statement and policy that the Post Office Department as adopted and has used for many years. We consistently carried it out in the strike that occurred at Chicago in the Montgomery Ward plant, and we also carried out that same policy when there was a strike in the Montgomery Ward plant at Portland, Oreg. We believe it to be a sound policy, and without legislation, or something like that, we intend to continue that policy.

The CHAIRMAN. Does that complete your statement, Mr. Cargill?

Mr. CARGILL. If there are any questions, I will be glad to answer them to the best of my knowledge and belief.

The CHAIRMAN. Mr. Cargill, as I understand, the policy of the Post Office Department with reference to mail-order houses generally is—and I say this because I have a plant in my own district, a large mail-order house—that for many, many years, as you pointed out, it has been the policy of the Department to station in the plant such employees as are regular annual employees of the Post Office Department. Is that correct?

Mr. CARGILL. Yes, sir.

The CHAIRMAN. It is also a part of the policy, under an understanding or agreement with the mail-order house, whether it is Montgomery Ward or some other, that they get the mail and take it to the plant and then they take the mail from the plant and deliver it either to the post office or to the railway terminal, is that correct?

Mr. CARGILL. That is the general policy, yes, sir. There may be an exception or two.

The CHAIRMAN. But, as you say, for many years that has been the policy at the Ward plant in Chicago.

Mr. CARGILL. Yes, sir.

The CHAIRMAN. And all the Post Office Department did was carry out the policy in existence for many years prior to the strike?

Mr. CARGILL. That is correct; sir.

The CHAIRMAN. Of course, the number of employees necessary in the plant at any given date depends upon the volume of work, does it not?

Mr. CARGILL. That is correct. It fluctuates with the volume of business.

The CHAIRMAN. And as long as there were drivers, who, as I understand it, were employees of Montgomery Ward, or contractors of Montgomery Ward?

Mr. CARGILL. That is correct. As I understand it, Montgomery Ward & Co. contracted with a trucking company to delivery and pick up their mail.

The CHAIRMAN. And as long as they were not transporting the mail, you did not need so many employees in the plant?

Mr. CARGILL. That is correct.

The CHAIRMAN. Mr. Dewey.

Mr. DEWEY. I was interested in your statement that under orders from Washington the postal employees in Ward's were reduced for two reasons: First, to keep them out of the possibility of any danger to themselves due to disorder in the striking plant, and, secondly, not to have them to sit around when there was no work to do in the plant. Is that generally correct?

Mr. CARGILL. Yes, that is generally correct.

Mr. DEWEY. Now, on the first question, how many people were injured in the Ward strike?

Mr. CARGILL. None that I know of.

Mr. DEWEY. There was a picket line established, but the people were orderly and the men who wished to walk out walked out, and the only disorder in the whole business was the carrying out of Mr. Avery by force. That was the only disorder in the plant, was it not?

Mr. CARGILL. I do not know of any disorder, sir.

Mr. DEWEY. Well, then, there being no disorder, the fear on the part of the postal authorities was a little exaggerated, was it not?

Mr. CARGILL. We had no fear at all, Congressman; we did not fear this strike at all. We deal with strikes every day. Every strike that occurs in this country becomes part of the Postal Service, and we are involved in those strikes. It is part of the routine with us.

Mr. DEWEY. Then, the first reason for moving the postal employees falls, because there was no disorder, no signs of disorder.

Mr. CARGILL. Congressman, if I said that it was danger to the postal employees in this particular case that caused the withdrawal, or the threat of danger in this particular case, I gave you the wrong impression.

Mr. DEWEY. I thought that was the main basis for the removal of the employees. Naturally, we would not want to have Government employees endangered by disorder, but if there was none, as you said, then the withdrawal rests on the fact that, owing to the strike, you would have had men sitting around doing nothing.

Mr. CARGILL. That is correct, sir.

Mr. DEWEY. All right, let us see how that works out. On April 12 there were 1,470 sacks of mail and 990 outside pieces placed in 3 boxcars which were switched to the Van Buren Street station and handed to the post-office authorities.

Mr. CARGILL. Now, on that, I would know nothing about that, as being accepted by post-office employees in the Montgomery Ward plant. It was strictly up to the company to deliver their mail to the post office for distribution.

Mr. DEWEY. There were in the plant, or had been in the plant 53 regular post-office clerks, 18 substitute post-office clerks, 2 laborers, and 2 post-office supervisors on duty on the morning of April 13.

Mr. CARGILL. That made 75 employees. That was my information.

Mr. DEWEY. All right. On the 12th those employees loaded 1,470 sacks of mail and 990 outside pieces in the boxcars which were switched by the Milwaukee Railroad to the union station. On the 13th, there were 3,854 sacks of mail and 2,100 outside pieces loaded into 6 boxcars and switched by the Milwaukee Railroad to the Van Buren Street station where the depot authorities passed them across the platform into the Chicago post office.

Mr. CARGILL. That was quite an unusual procedure. It was not the ordinary and direct manner of handling and receiving mail.

Mr. DEWEY. That is not in point at the present moment. I just want to show what they did on the last day before the strike in the Montgomery Ward mail house, as to the number of pieces they handled. Your people left that evening, the evening of the 13th, and the Montgomery Ward people themselves, who did not go out on strike, had to handle the situation themselves, and I will show you what they did.

On the 14th, during this period when your employees were withdrawn, not because there was any danger to the employees but because there was no work to do, here is what devolved on the employees of Montgomery Ward & Co.: They loaded 2,824 sacks of mail, 704 outside pieces, and 1,230 C. O. D. parcels into 4 boxcars which were handled similarly, by being switched from the mail-order house to the Van Buren Street station and passed across the platform into the post office.

Mr. CARGILL. Just before we leave that particular point, Mr. Dewey—

Mr. DEWEY. No, I wish to continue my statement, and then you can make yours.

Mr. CARGILL. I see.

The CHAIRMAN. I think the gentlemen from Illinois ought to tell the committee where he got this information.

Mr. DEWEY. If the members of the Post Office Department wish to refute any of it, they have an opportunity to do so. I got it by telephone this morning from the supervisor of mail in the Montgomery Ward mail house. If any of the figures are incorrect, why, I stand ready to be corrected. I wish to show that there was mail to be handled, and it was handled by the regular employees of Montgomery Ward.

Now, from the beginning of the 16th to and including the evening of the 24th, when the strike was called off, 10,458 sacks of mail, 5,425 outside pieces, and 5,760 C. O. D. pieces of fourth-class mail consigned to Ward mail-order customers were handled. One hundred and ten truckloads of this mail were delivered to the Chicago post office by trucks driven by Ward employees on the 19th, 20th, and 21st. Forty-seven truckloads of this mail were delivered to the Chicago post office on the 22d and 24th by the Willetts Co. trucks, the Willetts Co. being a Chicago truckster.

Now, the only point in bringing this thing up is I think it very definitely shows that there was plenty of work for the post-office officials who had been withdrawn, not because there was any danger to the post-office officials but because, on your own statement, they would have been sitting around wasting the taxpayers' money and

the Government's time by not having an occupation, and I show here that there was a great deal of mail going on. Now, I would like to have you make your statement in regard to that.

Mr. CARGILL. The figures that you have given are new to me. I don't know anything about those figures. I have no reason to doubt the accuracy of them. I do know this, that you mentioned that this was mail matter. It is not mail matter until it is accepted. If they placed in boxcars of their own volition and sent it around by devious ways and it was delivered to the post office in order to avoid going through the picket lines or in an effort to break the strike, the post office would know nothing about it. That would be a Montgomery Ward problem, pure and simple. However, if they delivered those parcels in the numbers that you have outlined there and they were delivered to the post office, were accepted, rated, weighted, and dispatched, they were not refused. We would have accepted everything that Montgomery Ward offered to deliver to us.

Mr. DEWEY. You are avoiding the question. The statement was, sir, that there was no work to be done, and for 31 years there had been postal employees in Montgomery Ward's constantly, in Montgomery Ward & Co.'s mail-order house, which had only been withdrawn for a period of 3 months, January 1, 1923, to March 8, 1923, when the Chicago post office attempted to handle the distribution themselves, and found that it was not an efficient way to do it and went back to the old way of taking the mail through this post office in the Montgomery Ward shop.

Mr. CARGILL. I think that statement is generally correct. I believe there was an experiment made at that time.

Mr. DEWEY. Up until April 13, when, as you state, there were 70 employees there who were withdrawn because there was nothing for them to do, I think that that statement is not on a sound foundation, if these figures which I mentioned and which I believe are reliable, coming from a reliable source, are correct.

Mr. CARGILL. Well, I have no fight with those figures. I have no report as to the number of parcels, and so forth, that were delivered through boxcars.

Mr. DEWEY. And through trucks during the strike. Willetts Co., a truckster in Chicago, went and picked it up in trucks. The Montgomery Ward employees drove 40 truckloads to the post office and the others were shipped in boxcars from Montgomery Ward's plant to the Van Buren Street Station and handled across the platform by the depot employees into the United States post office.

Mr. CARGILL. Congressman, would you believe that that was an unusual manner of handling those parcels?

Mr. DEWEY. I believe it was an unusual thing to remove the employees. You are going off on a line which I am very familiar with, which is not under discussion. The thing that is under discussion is your statement that there was no work to do for the 70 employees. There was no danger to the 70 employees, but there was no work for them to do, and hence they were withdrawn, and that is the only point that there is a definite misunderstanding about, because it appears to me that when the Montgomery Ward employees had to do the stacking and distributing of some 10,450 sacks—

Mr. CARGILL (interposing). I beg your pardon. They did not distribute that mail. It was not mail until it was accepted by the Post Office Department.

Mr. DEWEY. No, but it was put into the sacks ready for the mail.

Mr. CARGILL. No, sir; they did not distribute that mail. Only postal employees distribute that mail properly. They put it in the sacks, no doubt, but it was not distributed, it was not sorted.

Mr. DEWEY. There were 110 truckloads that would have been distributed by postal authorities in the Montgomery Ward plant had they been there to do the work, and you said that there was no work for them to do, and yet the Montgomery Ward Co. employees had to place this matter in sacks, undistributed, or whatever way it was, and take it down, and the work of distributing and proper classification, and all that, had been done in the Post Office Department.

Mr. CARGILL. Congressman, in pursuance of our policy that we give the same service during a strike that we gave prior to the strike, if there were devious ways of doing things and they wanted us to accept it as mail matter, and if they turned it over to unauthorized persons who would accept that mail, and we do not know what would happen to it, we would simply refuse in a case of that kind. Now, if the regular delivery, the regular schedules had been maintained by their contractor whom we knew, we knew who they were, we had an oath of office from every one of the drivers and the mail handlers that were in the trucking firm and who handled that mail from the time that it was accepted by the postal employees, placed in sacks, locked, with Government locks on it, and was turned over to these employees who have taken their oath of office and sworn to protect that mail until it was delivered to the railroad station or the post office, as the case might be—in that case we would accept it. Now, it would certainly be highly irregular if we were to accept mail, assume the responsibility for it, and then turn it over to someone that we did not know whether they were responsible or not. It was not mail matter until accepted by the post office. It was Montgomery Ward's responsibility to get that stuff safely to the post office before it became mail matter.

Mr. DEWEY. Who were the trucking contractors that had taken over and handled this matter in whatever procedure was followed, do you know?

Mr. CARGILL. I might be able to get that information for you.

Mr. DEWEY. Was it not the Willetts Co.?

Mr. CARGILL. Let me see if I can get the name of the company here. My information is rather meager on that point. However, it is my understanding that the Motor Express Co. had a contract with Montgomery Ward Co. hauling its mail, and that the employees of the Motor Express Co. who did haul and handle that mail had taken the oath of office and were recognized as being responsible.

Mr. DEWEY. There were 47 truckloads of this mail delivered to the Chicago post office on the 22d and 24th by the Willetts Co. trucks, and I rather imagine that those are the same trucking companies that had been used theretofore.

Mr. CARGILL. Well, do you know whether those employees had taken the oath of office? They might have picked them up anywhere and they might not have been responsible at all. I do not know. I am not saying that they were not responsible, but certainly they would not have been recognized by the Post Office Department, if they had not taken the oath of office.

Mr. DEWEY. It is well known, it almost has become part of the law now that we do not change horses in midstream, so the country

is told, and therefore, I doubt if the company would have changed truckers in the midst of a strike.

Now, we will go on to one other point. I do not want to take too much of your time, or the time of my other colleagues who may have questions to ask. There is one thing I am interested in, and that is how you substantiate the breaking of a contract with the people of the United States who put a 3-cent stamp on a letter addressed to an individual and you do not deliver it. Now, that occurred with the first-class mail, because Montgomery Ward had, in the past, for their own administrative convenience, sent down to the post office and picked up the first-class mail in order to get it into the company's offices, to be distributed to the proper departments at the time the departments opened. It seems to me it does not in any way vitiate the contract between the sender of the mail and the Government in case Montgomery Ward, for one reason or another, could not send down to get the first-class mail. Now, that had continued for a number of years, or months—I do not know how long, that the custom was to send down and get the first-class mail, but I think it was on April 19 that Mr. Kirby, who apparently is the head of the mail department at Ward's, called the Chicago post office and requested that all incoming first-class mail be delivered to Ward's, and Mr. Wentzel, the assistant postmaster, took the stand that during a strike they could only give the same service to Ward's as had been therefore given; in other words, that Ward might come after its first-class mail.

Now, here you have a case not between Ward and the post office but between the postal regulations of the United States and the American people, and I do not understand it. I think if there is any assumed authority on the part of the Postmaster General, or any Post Office Department employee, to change postal regulations in regard to the delivery of mail, that matter is of a serious nature, and may lead to serious consequences. When a letter is placed properly in the post-office box with a 3-cent stamp on it, it is supposed to be delivered.

I think it was in the 1890's that President Cleveland ordered Federal troops into the city of Chicago, during the so-called Pullman car strike, when the strikers attempted to interfere with the handling of United States mail. The city was put under martial law at that time. Now, there is a contract, and if we are going to permit any labor disturbance to interfere with the rights of the American people in having their mail delivered, why, that is something that I think the Post Office Committee of the House and Senate should inquire into, for at the same time you had the habit of sending up people with special delivery mail and postage-due parcels, and insured parcels, and returned C. O. D. parcels.

Mr. CARGILL. And that was continued throughout the whole strike.

Mr. DEWEY. Yes. So it proves that there is no danger, and why first-class mail was not delivered, I cannot understand, when a request to have it delivered by the Montgomery Ward authorities had been made to the proper authorities in Chicago.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Byrne.

Mr. CARGILL. Do you want me to make any explanation in response?

Mr. DEWEY. Yes. I have completed my questions, unless your explanation prompts further questions.

The CHAIRMAN. You may proceed with your explanation.

Mr. CARGILL. The statement that we refused to deliver mail to Montgomery Ward & Co. is erroneous to this extent: We never refused at any time to deliver Montgomery Ward & Co.'s mail in the same manner that we had delivered it prior to the strike, and for 30 years they had been calling at the post office for this mail.

Mr. DEWEY. I have admitted that.

Mr. CARGILL. Now, they were unable to have their contractors go through the picket line. They refused to go through the picket line, so they asked the Post Office Department to deliver this mail that had come in, in the meantime, to their plant.

Mr. DEWEY. Come in to where?

Mr. CARGILL. To the offices, their plant. Rather than call at the post office for it, they wanted the post office to deliver it at the plant.

Mr. DEWEY. It was only first-class mail that they asked for, was it not?

Mr. CARGILL. That is true. They wanted the first-class mail.

Mr. DEWEY. And the first-class mail was directed to the Chicago post office, or was it directed to Montgomery Ward's plant on some street in Chicago?

Mr. CARGILL. Well, now, they get great quantities of mail, and I could not tell you exactly how each piece might be addressed.

Mr. DEWEY. Well, suppose it was addressed to Montgomery Ward, Post Office, Chicago?

Mr. CARGILL. Then it would be placed in their box or their sacks.

Mr. DEWEY. What is the usual way of writing a letter to a company in Chicago? Would you write it to Montgomery Ward, General Delivery, Post Office, Chicago, or Montgomery Ward & Co., at an address in Chicago?

Mr. CARGILL. Well, now, they get enormous quantities of mail and it comes addressed all kinds of ways, but we would deliver to the point that Montgomery Ward & Co. had asked us to send their mail to. If it was a box, we would put that in a box, and that would constitute delivery.

Mr. DEWEY. Yes.

Mr. CARGILL. That had been going on for 30 years. Then, they immediately wanted to change it because of the strike, and our policy would not permit that.

Mr. DEWEY. Well, that is one thing that I think this committee of inquiry may develop, among many things. This is one thing which is of interest. If the post-office authorities can break their contract with the American people on the delivery of mail just because there is some custom between the local post office and the company to which it is directed, I think that is something we ought to go into. It may mean the mail will remain undelivered for many numbers of days, and one does not know what is the emergency contained in that first-class mail. First-class means as speedy delivery as the post-office authorities can make.

Mr. CARGILL. The Montgomery & Ward Co., as I understand it, has made no complaint on their registered mail. They received that all throughout the strike.

Mr. DEWEY. I am not talking about registered mail. I am talking about a letter with a 3-cent stamp on it, sent by John Doe to Montgomery Ward & Co.'s office in Chicago and the post office of Chicago cannot deliver it.

Mr. CARGILL. That is right. Incoming c. o. d. and insured parcels were delivered the same way throughout the strike.

Mr. DEWEY. I am not talking about that, I am talking about first-class postage, a letter with a 3-cent stamp on it.

Mr. CARGILL. That is right.

Mr. DEWEY. If I mail a letter to somebody I expect to have that delivered, and so does every other American citizen.

Mr. CARGILL. The post office was ready to deliver that in the same manner that it had delivered it before the strike.

Mr. DEWEY. The Post Office Department set up the second contract, which they did not have any right, to my way of thinking, to set up. They were only under one contract, and that is the delivery of the mail by the sender to the addressee.

Mr. CARGILL. Well, the Post Office Department has to do things in an orderly manner, otherwise, there would be so much confusion that no mail would be delivered anywhere, and we must have a point of delivery. It cannot be changed at the whim of every individual at any time that they want the mail handled whenever it might suit their convenience. We would not have enough money, we would not have enough appropriations, we would have enough employees trained to take care of all the forwarding, as far as that is concerned. When it comes to a matter of involving the Post Office Department in a strike, we try to avoid it in every way we can. We try to play absolutely neutral, and I know of no other way than the policy we have adopted and that has proven sound over the years.

Mr. DEWEY. Well, I think it is something that deserves grave consideration. It used to be an old saying in this country that you do not monkey with the United States mail. People can put a parcel on top of a post box at the corner, and it stays there, unguarded, besides it belongs to the United States mails, and I do not want to see that contract between the American people and a subsidized department of the Government which the same American people support in taxes as well as by placing stamps on the envelope—I do not want to see that disturbed, and I do not think the Congress of the United States wishes to see it disturbed.

The CHAIRMAN. Mr. Byrne.

Mr. BYRNE. Mr. Cargill, do you know of any monkeying that was going on out there regarding the Montgomery Ward mail?

Mr. CARGILL. I am afraid I did not get the question just exactly, sir.

Mr. BYRNE. Mr. Dewey said something about he did not like to see the mail monkeyed with.

Mr. DEWEY. No, no; I said that was an old saying, that was history.

Mr. BYRNE. I beg your pardon, but you used the words "monkeying with the mail," and I wanted to find out whether or not this witness knew of any monkeying with any mail of Montgomery Ward during this period of the strike.

Mr. CARGILL. No, sir; there is nothing of that kind. We handled that mail in the same manner, with the same care, and gave it the same protection that we did any other mail the Post Office Department handles.

Mr. BYRNE. And, Mr. Cargill, that system is based upon many years of experience not only with such but with other things that might be called crises?

Mr. CARGILL. Yes, sir.

Mr. BYRNE. And the formula that was adopted in this particular instance was the same formula that you have applied for many, many years?

Mr. CARGILL. It was, sir; strictly.

Mr. BYRNE. Was there the slightest deviation from it?

Mr. CARGILL. Not to my knowledge.

Mr. BYRNE. And your knowledge is fairly intimate?

Mr. CARGILL. Yes. I am supposed to know all about it.

Mr. BYRNE. Well, is it based upon a personal knowledge or does it come to you by way of investigation?

Mr. CARGILL. Well, it comes to me by way of reports. I have not been to Chicago personally myself since this strike.

Mr. BYRNE. But have you had a full supply of reports from Chicago regarding the entire situation, as to the mail situation at the Montgomery Ward plant during that strike?

Mr. CARGILL. I believe we have, sir.

Mr. BYRNE. Do you know of any better system that could be applied, based upon the experience of Montgomery Ward recently, that would call upon you to change the formula?

Mr. CARGILL. No, sir; I do not know of any better system that could be applied.

Mr. BYRNE. And was there any evidence, so far as you know, that any of the postal employees were in anywise assisting the so-called strikers in this strike?

Mr. CARGILL. There were not, to my knowledge; no, sir.

I do not see how they could. They had their particular job to perform. They are under the direction of the postmaster and the postmaster is under the direction of the First Assistant's office.

Mr. BYRNE. From your information, is it a fact or not that the attitude of the postal authorities in the *Montgomery Ward* case was absolutely one of neutrality?

Mr. CARGILL. It was one of neutrality, strict neutrality.

Mr. BYRNE. That is all.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Mr. Cargill, I am not sure that I just have this whole picture in mind. As I understand it, the Post Office Department had maintained in the establishment of Montgomery Ward & Co. in Chicago a force of employees for many years to handle the mail sent out by the company, and you say the number of employees just before the strike was how many?

Mr. CARGILL. Seventy-five. That was on the morning of April 13.

Mr. ELSTON. Now, do you know when it was that this plan was put into effect?

Mr. CARGILL. You mean of having a postal unit in the Montgomery Ward plant?

Mr. ELSTON. Yes.

Mr. CARGILL. Well, I tried to look up our records at the post office, but it goes back so far I have no records that indicate the exact date that the plan was adopted. It was found to be mutually advantageous both to the Post Office Department and to the Montgomery Ward Co. These employees were put there in order to expedite the

handling of this mail rather than taking it all the way down to the post office and getting it mixed with other mail. It was mutually advantageous both to the Post Office Department and Montgomery Ward & Co. It saves us money and saves Montgomery Ward & Co. money in handling it in that manner. I think they were wise in detailing the employees out there to handle this mail. The number of employees at the plant would depend on the volume of mail to be distributed, to be received and distributed at that particular point.

Mr. ELSTON. In effect it was a branch post office?

Mr. CARGILL. The technical details of a branch post office and a station and a unit are a little different in each case, but to all intent and purposes it was a postal unit of the Chicago post office operating in the Montgomery Ward plant to accept and distribute this mail to sacks, after which these sacks are locked up, and then, as a part of the understanding between Montgomery Ward and the Post Office Department, Montgomery Ward & Co. assume the burden of carrying this mail from their plant, after it had been accepted by the Post Office Department, by authorized persons, whom the Post Office Department accepted after they had taken an oath of office to deliver, handle, and protect this mail. Even though it was handled by a contractor, they had taken the oath of office—and this is important, I think; it was then delivered to the railroad stations direct, without having to go the to post office.

Some of that mail—we call it residue—possibly it would not make up into sacks, and then it would go to the post office and be distributed into sacks that were going into the same town, and in that way we believe it was advantageous, mutually beneficial, for the Post Office Department and Montgomery Ward & Co. If it had not been, I assure you that would not have been continued over the years. We try to watch the expenditures for the Post Office Department; it is part of my job, and we watch it very closely. Now, if it was costing Montgomery Ward too much, if they did not think it was advantageous, certainly they would not have continued the agreement and arrangements with us.

Mr. ELSTON. Now, to refresh your recollection, this system was put into effect back in March 12, 1913, was it not?

Mr. CARGILL. I would expect that to be true. If they say it is that time, I would have no reason to doubt it.

Mr. ELSTON. That was just 2 months after the parcel-post service was put into effect, was it not?

Mr. CARGILL. Parcel post was inaugurated in 1913; yes.

Mr. ELSTON. And it continued without interruption up until this strike?

Mr. CARGILL. Well, there was one little break in there that Mr. Dewey called attention to, I believe. Aside from that, it was continued from that time.

Mr. ELSTON. There was that little interruption in there, but that was not because of any strike.

Mr. CARGILL. No. I think that was an experimentation that was made at that time, to see if it would be better to take it out of their plant.

Mr. ELSTON. Let me see if I get this correctly.
When does the mail become United States mail?

Mr. CARGILL. It becomes United States mail at the time that a post-office employee rates it, sees that the stamps are properly on it and he accepts it.

Mr. ELSTON. That is right in the establishment of the company in Chicago?

Mr. CARGILL. That is correct, sir; but it is not United States mail until it is accepted by post-office employees.

Mr. ELSTON. Now, you say that your regulations provide that there shall be no change in point of delivery or change in method of handling the mail during a strike.

Mr. CARGILL. There is one word that you used there that I would question, the word "regulation." That is our policy. It is not a regulation; it is our policy.

Mr. ELSTON. Then, you do not have anything in writing to that effect?

Mr. CARGILL. No; there is nothing in the postal laws and regulations, if that is what you have reference to.

Mr. ELSTON. It is just an unwritten policy of the Department to do that?

Mr. CARGILL. That is right, sir.

Mr. ELSTON. Now, when did you first get any notice of this strike?

Mr. CARGILL. Well, the first personal information I had about was on the radio on the morning of the 13th, I believe. I heard that on my own radio. Then I came to the office and we received a teletype message from the post-office inspector in charge of Chicago to the effect that the strike was on. That was on the morning of the 13th, I believe.

Mr. ELSTON. Well, when were these employees withdrawn from the company?

Mr. CARGILL. At the close of business, the day's business, on the 13th. We were advised at that time that they were unable to have their trucks go through the picket lines, and there was no outlet for us to take any more mail there, they could not get it out.

Mr. ELSTON. Well, the mail did go out, did it not?

Mr. CARGILL. The 4,500 sacks?

Mr. ELSTON. Yes.

Mr. CARGILL. The information I had was this: Mr. Kirby came to the postmaster and advised him that they had 4,500 sacks of parcels that had been accepted by the Post Office Department and were there on the floor, and that they could not move, and he said, "We want you to move it." We said: "Well, we will stay right there and see that the 4,500 sacks of mail matter is properly dispatched. We will keep our employees there until that is done. That mail was gotten out of there at 1:45 in the morning, on the morning of April 14, and was dispatched and delivered.

Mr. ELSTON. Do you know that the mail did not get out after that?

Mr. CARGILL. Then, there wasn't any mail accepted there until they had the avenues, the regular schedules and regular transportation facilities, ready to take it out.

Mr. ELSTON. When did that happen?

Mr. CARGILL. Let me see when the strike ended.

Mr. ELSTON. They delivered mail all during the strike, did they not, to the post office?

Mr. CARGILL. They delivered parcels, you mean?

Mr. ELSTON. Yes.

Mr. CARGILL. For mailing?

Mr. ELSTON. Yes.

Mr. CARGILL. That is right. It was not accepted, of course, until it became mail matter, until it was accepted by the post office.

Mr. ELSTON. That is right, technically it wasn't mail matter, it did not become mail matter until it was accepted.

Mr. CARGILL. That is right.

Mr. ELSTON. They delivered all during the strike packages to the Post Office Department, did not they?

Mr. CARGILL. To the downtown office?

Mr. ELSTON. Yes.

Mr. CARGILL. Possibly they did.

Mr. ELSTON. And the volume of mail that was delivered to the Post Office Department during this period of time was increasing from day to day rather than decreasing, if the figures Mr. Dewey cites are correct.

Mr. CARGILL. Assuming those figures are correct. I knew nothing about those figures. I have no such statistics, but I have no reason to doubt those figures at the moment, and I would not doubt those figures.

Mr. ELSTON. If the mail was being delivered to the post office downtown, does not that refute your statement that the mail could not get through?

Mr. CARGILL. Every piece of it what was brought to the post office was accepted.

Mr. ELSTON. Right—but does not that refute your statement that the mail was piled up in Montgomery Ward's place of business and could not get out?

Mr. CARGILL. I want to make this very clear: The Post Office Department feels a great responsibility in handling a piece of mail, whether it is one parcel or many thousands of parcels, and we have a set schedule and we know the people that are handling this mail. We had agreed that the trucking company, the contractor for Montgomery Ward & Co. should handle the mail. Our employees were bonded properly. We had them take the oath of office, and we accepted the mail matter in Montgomery Ward & Co.'s plant. We knew who was held accountable for it, where we could go and collect the money for the bond if anything went wrong with that mail, and we refused to deliver it to unauthorized persons, irresponsible persons, and I think we could come in for condemnation if we did.

Mr. ELSTON. Did anybody ask you to do that?

Mr. CARGILL. To do what?

Mr. ELSTON. To deliver to unauthorized persons?

Mr. CARGILL. That is the very thing you are asking here now. You are saying: "Did not they get it out?" Certainly, they got it out, but we could not get it out there. That was Montgomery Ward & Co.'s responsibility, to get that mail out, and when their own employees refused to go through, or their own contractor refused to go through the line, that was their responsibility. Now, then, they went out and got unauthorized persons, persons that the Post Office Department knew absolutely nothing about, and brought it in. They said, "We will get our parcels out," and the Post Office said, "All right, you can get them out any way you want to. If you can deliver them safely to the post office where we can accept the mail, we will accept it; otherwise, not."

Mr. ELSTON. You say their authorized truckers were not making deliveries to the post office downtown during the strike?

Mr. CARGILL. That is correct, sir. Mr. Kirby told us that he was unable to get his regular contractor to go through those picket lines and he wanted us to go through the picket lines.

Mr. ELSTON. Later on, did you learn that they were getting the mail through, that they were taking it downtown to the post office?

Mr. CARGILL. You mean these regular authorized persons that we would turn the United States mail over to?

Mr. ELSTON. Yes.

Mr. CARGILL. If they would have gone through the picket line, every piece of that mail would have gone through and we would have kept the force necessary to maintain it, we would deliver it and receive it, and give it the same service during the strike as we were giving before the strike, if it took every post-office employee in the United States, to see it did get through, and jeopardize their lives in doing so.

Mr. ELSTON. Mr. Dewey asked you about the delivery of mail to the company.

Mr. CARGILL. That is right.

Mr. ELSTON. The company had been accustomed to coming down to the post office early in the morning and picking up the first-class mail as a matter of convenience.

Mr. CARGILL. I would like to give you those schedules if you do not mind. I have them right here.

Mr. ELSTON. You mean as to hours?

Mr. CARGILL. Yes; as to how many times a day that it could be picked up and the quantity of mail that is picked up at each one of these times.

Mr. ELSTON. I do not know that the quantity or time makes any difference, unless some of the other members of the committee want it.

The CHAIRMAN. Let him put it in.

Mr. ELSTON. All right, just put it in the record there.

Mr. CARGILL. The regular schedule that Montgomery Ward called for first-class mail at the Chicago post office is this: At 2:10 a. m. they received on an average of 5 pouches of mail; at 4:45 a. m., they received 4 pouches of mail; at 6:20 a. m., they received 3 pouches of mail; at 7:20 a. m., they received 5 pouches of mail; at 7:45 a. m., they received 6 pouches of mail; at 8:25 a. m., they received 3 pouches of mail; at 9 a. m., they received 2 pouches of mail; at 9:45 a. m., they received 3 pouches of mail; at 10:45 a. m., they received 4 pouches of mail; at 11:45 a. m., they received 2 pouches of mail; at 11:45 p. m., they received 8 pouches of mail. On Tuesdays and Wednesdays they average about 48 pouches of mail a day, and on other days they average about 43 pouches of mail a day. These pouches are usually full. They weigh about 30 pounds apiece, and that is figuring about 50 letters to the pound.

Mr. ELSTON. Now, sometime during the strike the company requested the Post Office Department to make the deliveries to the company?

Mr. CARGILL. To their place of business, the plant?

Mr. ELSTON. Yes.

Mr. CARGILL. Yes, sir.

Mr. ELSTON. If this previous arrangement had not been entered into, that is what you would have done anyhow?

Mr. CARGILL. If it had been our customary practice to deliver those 48 pouches of mail a day to Montgomery Ward's plant and it had been in effect prior to the strike, we would have delivered those 48 pouches of mail to them right on schedule.

Mr. ELSTON. That is not an answer to my question.

My question was: If you had no arrangement at all, the Post Office Department would have delivered the mail to the place of business of the company?

Mr. CARGILL. I do not see how we could not have any arrangement at all. Everybody has to have some arrangement as to where they are going to have the mail delivered. We have got to have an arrangement, we have got to know where you want to have your mail delivered in order to deliver it to you.

Mr. ELSTON. You do not have to have an arrangement; no person who receives mail has to go to the Post Office Department to arrange where to deliver. If the letter is addressed to you, to the street address, it is delivered to that address without any arrangement with the Post Office Department.

Mr. CARGILL. That is right, and we deliver there if it is customary to deliver there.

Mr. ELSTON. If you get mail in Chicago addressed to Montgomery Ward & Co. at their street address and you had no arrangement of any kind to pick up the mail, you would have been required to deliver and you would have delivered to the company's office, would you not?

Mr. CARGILL. No; our regulations require that a firm or an individual shall have a regular place for the delivery of his or its mail. Now, for instance, if you had mail to Montgomery Ward & Co., and we will say it is addressed to 1100 Wabash Avenue, or whatever the address is—and I am just using this as an illustration—and another piece came addressed to 1102 Wabash Avenue, and another to 1104 Wabash Avenue, you know we would have to deliver that at the same point, if we knew it was for the same addressee. We could not be delivering it to each one of those addresses; we would be held in ridicule, if we did anything like that.

Mr. ELSTON. I think you are just stretching the point a little bit. If the company has an arrangement with the Post Office Department for the delivery of mail at a certain place, or an arrangement to pick it up in a certain fashion, that is always subject to change, is it not?

Mr. CARGILL. Yes.

Mr. ELSTON. They can come in and change it at any time?

Mr. CARGILL. Except when there is a strike on.

Mr. ELSTON. Why does a strike make any difference?

Mr. CARGILL. For the simple reason we want to play absolutely neutral in any strike. We do not propose to break a strike in one way or another. That is not the Post Office Department's affair; that is between the management and the strikers. We are serving both parties, both the strikers and management; we are going to give them the same fullness of fidelity in the delivery of their mail, whether they are strikers or whether they are the management. We are going to deliver it. We are going to deliver that mail while the strike is going on just like we had before the strike. We are not going to change the point of delivery, we are not going to increase the facilities

for doing that particular thing, but we are going to get it to you the same way we did before.

Mr. ELSTON. What possible indication of lack of neutrality would the delivery of the mail to the company's place of business establish?

Mr. CARGILL. I am not sure that I quite understand your question, sir.

Mr. ELSTON. Well, maybe it was not very clear.

Do you think that the delivery of the mail to the company's place of business would be any indication that you were taking sides one way or the other?

Mr. CARGILL. Well, I think that it is a very poor time to ask for a change of address, when you are in a battle.

Mr. ELSTON. Well, the circumstances might require it, and the circumstances in this case did require it.

Mr. CARGILL. Yes, but—

Mr. ELSTON (interposing). Now, since the circumstances required it, would not that be a good reason for asking for the change?

Mr. CARGILL. It is not when you want to play absolutely neutral and fair to both sides and not interested in their fight one way or the other. The only thing we are concerned with is in protecting the mail and delivering the mail properly.

Mr. ELSTON. That comes back to my previous question now. What is there about delivering the mail to the place of business of the company that would make the Post Office Department take sides one way or the other?

Mr. CARGILL. That is exactly what we refuse to do—to take sides one way or the other.

Mr. ELSTON. Do you think that would be taking sides in a labor controversy, simply because you deliver mail to a company's place of business?

Mr. CARGILL. I certainly think it could be construed in that light.

Mr. ELSTON. Would you so construe it?

Mr. CARGILL. I would.

Mr. ELSTON. What side would you be taking?

Mr. CARGILL. Well, I think that it would make no difference one side or the other. Suppose it was—well, I have no supposition to make in the matter.

Mr. ELSTON. It was solely because of that that the Post Office Department refused to deliver the first-class mail received at the Chicago post office to the place of business of Montgomery Ward & Co.?

Mr. CARGILL. Yes; it was there for them to come and get, as they had done for 30 years. It was right there. Now, did we refuse to deliver anything to them?

Mr. ELSTON. No; but you just said a moment ago that that arrangement could have been changed at any time.

Mr. CARGILL. Prior to the strike.

Mr. ELSTON. Did you have any orders from anybody to withdraw those employees from the company's place of business in Chicago and send them back to the downtown post office?

Mr. CARGILL. No. Our general instructions to postmasters are that at no time are they allowed to see post office employees loafing on the job. That means money. We could use them at some other place. As soon as they become idle, as soon as the work becomes

slack, or there is not sufficient work to keep them busy, we immediately change them to some other point.

Mr. ELSTON. I do not know that that is an answer to my question. Did anybody give you an order?

Mr. CARGILL. Nobody gave me orders.

Mr. ELSTON. Did anybody give you an order to withdraw these employees from the company's place of business and send them to the downtown postoffice?

Mr. CARGILL. No; nobody gave me orders to do that, and I had no orders about that at all. We have an elastic policy. If Montgomery Ward & Co. needed 150 employees to handle the mail we would have furnished the 150 employees. If they only needed 20 or 50, we would draw the others back to the main office.

Mr. ELSTON. Mr. Cargill, when you got this teletype from Chicago advising you of the situation, did you discuss it with anybody here in Washington?

Mr. CARGILL. Yes; I discussed it with the First Assistant Postmaster General, Mr. K. P. Aldrich.

Mr. ELSTON. Did you discuss it with anybody else?

Mr. CARGILL. Yes; I might have discussed it with Mr. C. B. Uttley. He is a Deputy First Assistant Postmaster General. There are two Deputy First Assistant Postmasters General; I am one and Mr. Uttley is the other. We sit in the same room. Possibly I discussed it with him. I discussed it with him and with Mr. Aldrich. There were no instructions given to me to do that. I handled it myself. I am responsible to Mr. Aldrich and to the Post Office Department for the action that was taken.

Mr. ELSTON. You say you did not discuss it with anybody other than those two men?

Mr. CARGILL. If I did it was so casual that I do not recall it right now. You know it is a difficult thing to say I did not discuss it with anybody else. I heard it over the radio, I might have discussed it at my home, and there might have been other people. You mean the first morning that I got the teletype?

Mr. ELSTON. Any time before the order was sent to Chicago to withdraw the employees from the company's place of business.

Mr. CARGILL. The order was never sent to Chicago to withdraw the employees. The postmaster did that himself, based on the volume of work. I issued no instructions to withdraw any employees.

Mr. ELSTON. What was the telegram you sent?

Mr. CARGILL. I think I can quote it for you exactly. There were two telegrams that were sent. One said:

Do not deliver returned mail by post-office trucks to Montgomery Ward & Co. plant. Give only postal service that has been accorded before strike.

The next one—

Mr. ELSTON (interposing). Wait a minute. Let us get the date of that.

Mr. CARGILL. That was on April 14, I believe.

Mr. ELSTON. Who signed it?

Mr. CARGILL. It was signed: "K. P. Aldrich." I dictated the telegram myself. That was on the 14th.

On the 19th, the following message was received from the postmaster:

Montgomery Ward demands delivery to their plant of first-class mail. Heretofore they called at main office for all first-class mail. Immediate telegraphic advice requested.

In response to that I dictated this telegram:

Retel give only postal service to Montgomery Ward that has been accorded before strike.

Mr. ELSTON. Now, before you sent either one of those telegrams nobody communicated with you and gave you any directions?

Mr. CARGILL. You mean like orders, telling me what to do?

Mr. ELSTON. Yes.

Mr. CARGILL. No. I am charged with the responsibility to see that proper postal service is given in the western half of the United States, and Chicago happens to come under my jurisdiction.

Mr. ELSTON. Did you consult with any other Government department at any time during this whole controversy about this matter?

Mr. CARGILL. You mean up to the last day or two?

At the time that this was going on, that is what you have reference to, is it not?

Mr. ELSTON. That is right.

Mr. CARGILL. No, I did not consult with any other Government agency whatsoever.

Mr. ELSTON. I think that is all.

The CHAIRMAN. Mr. Monroney.

Mr. MONRONEY. Mr. Cargill, you said, I believe, you had been with the Post Office Department since 1920.

Mr. CARGILL. Since 1921, September 1, 1921.

Mr. MONRONEY. Will you detail to the committee the various employments that you had with the Post Office Department? How did you start?

Mr. CARGILL. On September 1, 1921, I entered the Postal Service as a substitute clerk in the Montgomery, Ala., post office. During my substitute service, I carried special-delivery mail, I carried mail in pouch on a regular city route. As a substitute I was also substitute clerk, and I then received my permanent appointment as regular clerk.

As a regular clerk, I accepted mail at the window, I distributed mail in the city division, I distributed mail in the outgoing section and put up the State schemes. I was also utility clerk in the office, I kept the books and worked in the money-order department, in the registered mail section, and acted as secretary to the postmaster.

Later I became a claim clerk and handled the claims at the inquiry window, and was the secretary to the superintendent of mails.

In 1927, I stood the post office inspector's examination and was appointed post office inspector on July 1, 1928, and was assigned to the Philadelphia Division. I remained in the Philadelphia Division as post office inspector from 1928 until 1933, at which time I was transferred to the Chief Inspector's office here in Washington.

From that time, until 1938, I was post office inspector in the Chief Inspector's office, and by request I went over to the Bureau of the Budget and was Budget examiner over there for 1 year, when I transferred back to the Post Office Department as post office inspector, and was attached at that time to the Chief Inspector's office.

In 1940, I was appointed assistant superintendent, Division-Post Office Service, in the First Assistant's Bureau, and in, I think it was March of last year, I was appointed Deputy First Assistant, and have been in that position since.

Mr. MONRONEY. That same line of promotion from the very beginning, as a civil service employee in the post office, is true of Mr. Aldrich, I believe, and also of Mr. Uttley, the two men that you mentioned discussing this with?

Mr. CARGILL. That is right, sir, although they had a great deal more experience than I did.

Mr. MONRONEY. I mean they are career men in the post-office service.

Mr. CARGILL. That is right, sir.

Mr. MONRONEY. The whole decision you say on this was in line with the policy, the long-established practice, in the Post Office Department?

Mr. CARGILL. That is correct, sir.

Mr. MONRONEY. Do you know what the date of that policy is? When it originated?

Mr. CARGILL. No, I could not tell you just exactly the time that it originated, nor possibly the exact spot, but I know it has been experimented with over many years. In order to stay out of trouble, we found that this policy kept us out of trouble as far as we were concerned, and that we were able to protect the mail by pursuing this policy and following this policy up. Down at the post office, I think we are practical people. We are not theorists, to the extent that we go on theory. We have got an actual job to do, we have got to actually deliver a concrete piece of mail. We have hills and valleys and steep steps to go up. Somebody has actually to do the work. You cannot theorize in this thing, it is a practical proposition.

Mr. MONRONEY. Would you say this policy was of 2-years' duration, or of 4-years' duration, or how long?

Mr. CARGILL. No, no, I would say it has been in existence for years and years. I would not like to make any statement as to how long, but it has been here ever since I know anything about it.

Mr. MONRONEY. It has been adhered to rigidly and strictly to your knowledge in all such cases, you have refused involvement on one side or the other in any strikes by disturbing the status quo that existed until at least the strike was over?

Mr. CARGILL. Yes, and sometimes it takes the wisdom of Solomon to decide what service shall be given. We try to give the same service that was given before, we try to give the same service during the strike as was given before the strike so as to be absolutely neutral in the matter.

Mr. MONRONEY. In this case, it was easier to determine because you had rather fixed policies owing to the large volume of mail that was handled?

Mr. CARGILL. Yes, there were regular schedules, regular employees, and we almost know the class of mail that is to be handled.

Mr. MONRONEY. On the basis of your postal experience, do you know of any case where a company receiving in the neighborhood of 45 or 48 pouches of mail a day, has those delivered by an ordinary carrier?

Mr. CARGILL. You mean the others have ordinary carriers deliver them?

Mr. MONRONEY. Yes.

Mr. CARGILL. I do not know of but one exception in the whole United States, and that is to Montgomery Ward & Co. in their Portland plant.

Mr. MONRONEY. That is delivered by a regular carrier?

Mr. CARGILL. Well, it is delivered by a contractor for the Department.

Mr. MONRONEY. I mean your utility companies, your other large receivers of mail. Even newspapers generally call for their mail at the post office in the post office box, do they not?

Mr. CARGILL. That is right.

Mr. MONRONEY. Would it not be a rather difficult distribution problem to deliver 48 pouches of mail at the plant at least on an hourly schedule?

Mr. CARGILL. We just could not manage it on an hourly schedule. It would take too much work, because every other concern in the whole country would demand the same service, and we would have to give them the same service. Ordinarily we make one or two deliveries of parcel post a day. We make one, two, three, and sometimes four deliveries of first-class mail a day, dependent on the volume. For instance, here they are receiving 11. They do that for their own convenience. We would deliver to them if they wanted it delivered to them and had ordered it before this strike, we would have delivered it. Immediately, when the strike goes into effect, though, we say to them: "We will give you the same service we gave you before, and until the strike is over we will continue to give you the same service."

Mr. MONRONEY. If for any reason you had been delivering this mail at the plant and the request had been made to permit them to pick it up at the post office, under your policy they would not be able to pick it up there, they would have to continue to receive the mail at the plant; is that right?

Mr. CARGILL. During the strike?

Mr. MONRONEY. During the strike.

Mr. CARGILL. We try to be practical about the thing. We do not say that it has to be done just this way. There are circumstances that might prevent it. For instance, we might have—of course, I do not want to give any poor illustrations here, but suppose the regular routing of that truck was down a certain street and if a building falls down and debris covered up the street, certainly he would not wire to Washington asking, "How am I going to get the mail to the plant?" He would be told, "Drive the truck around the block."

Mr. MONRONEY. In establishing these 75 workers in the Montgomery Ward plant, had the mail been sent as the corner grocery store or small businessman would have to send it, it would have to clear through your central office, would it not?

Mr. CARGILL. You mean in Chicago?

Mr. MONRONEY. Yes.

Mr. CARGILL. We are just talking about a theoretical post office?

Mr. MONRONEY. No, I am talking about the difference between the service under the arrangement that Montgomery Ward had and that enjoyed by an average business concern. If I am a small businessman wishing to mail a package, or if I have a small amount of parcel

post business, I must take that parcel post business to the post office, wait in line at the window, have it weighed, pay the postage, and then it starts through the distribution channels?

Mr. CARGILL. That is correct, sir.

Mr. MONRONEY. Because they found it good business to do as they did, and it would give them a certain competitive advantage, perhaps, over others, this service was supplied, which the post office found to be economical for its operation as well as profitable to the Montgomery Ward plant?

Mr. CARGILL. That is correct, sir.

Mr. MONRONEY. Do you know how big a company has to be before they can enjoy that privilege of having postal workers in their plant?

Mr. CARGILL. No. The circumstances surrounding the case would determine. We have no rule as to the size of the plant. If there was a concern using the mails to a great extent and they petitioned us to put employees in their plant, we would ask a post office inspector to go out and make a thorough investigation and give us a report on all the facts in the case before that would be ordered.

Mr. MONRONEY. A neighborhood business within a block or two of Montgomery Ward, could they have utilized these postal facilities in the Montgomery Ward plant?

Mr. CARGILL. I do not think so.

Mr. MONRONEY. It was for the exclusive use of Montgomery Ward in their own business?

Mr. CARGILL. That is right. It was put there for that purpose. Right at that one point, I would like to say this: Suppose somebody came in there, the chances are they would be nearer a postal station somewhere else than they would in the Montgomery Ward plant, and it would be more convenient for them to mail somewhere else, but if a postal employee was there and it was presented by one of the customers of Montgomery Ward & Co., if a station is in the plant, I do not think the post office employee would refuse a parcel if it came there.

Mr. MONRONEY. I am just wondering as to these 75 workers in the office. Did they have windows there where they could receive mail and weigh it?

Mr. CARGILL. I have made no inspection of that plant personally, so I could not tell you how the scheme was set up.

Mr. MONRONEY. The thing I was getting at, was this a substation, as was claimed, or was it a private post-office unit?

Mr. CARGILL. It is a post-office unit for the purpose of distributing this mail there that comes in, in such huge quantities.

Mr. MONRONEY. And used 100 percent by Montgomery Ward?

Mr. CARGILL. That is right.

Mr. MONRONEY. The length of time for the average user of parcel post to have the package delivered would be somewhat longer than that which is enjoyed by Montgomery Ward under the special facilities?

Mr. CARGILL. I believe it would.

Mr. MONRONEY. That is evidently why Montgomery Ward went to the expense of picking up this mail at the private post office and delivering it to the railroads, I think you said, even eliminating the necessary time required to go through the Chicago post office.

Mr. CARGILL. That is correct, sir.

Mr. MONRONEY. The whole arrangements was a matter that had been entered into as good business dictated both to the post office and to the primary advantage of Montgomery Ward on a competitive basis.

Mr. CARGILL. That is correct, sir.

Mr. MONRONEY. I believe that is all.

The CHAIRMAN. Mr. Curtis.

Mr. CURTIS. I just would like to ask you a few questions.

This post office in the Ward store, did the public use that? Could any individual that happened to be in the store drop a letter there?

Mr. CARGILL. Personally, I have never visited this post office, this unit in Ward's plant. I have never been there personally to see it, so I can only tell you in generalities.

Mr. CURTIS. Usually, the public could use it, could they not?

Mr. CARGILL. If it is open to the public, the public could use it. If it was in their workroom where the public was excluded from their particular operation, then, of course they could not get in for that purpose. But ordinarily, a branch post office, if you wanted to mail something and you happened to be in that plant, certainly there would be no objection, as far as the post office is concerned, of accepting your parcel. It was not put there exclusively for the use of Montgomery Ward, it was to accept parcels at that particular point, and that was the most convenient place to accept them.

Mr. CURTIS. And stamps could be bought there by the public?

Mr. CARGILL. That is right, if they had stamps for sale they would sell them to anybody that came up.

Mr. CURTIS. These employees that work in Ward's store, in the branch post office, where would they report to work in the morning?

Mr. CARGILL. They would report at that point.

Mr. CURTIS. They are all civil-service employees, aren't they?

Mr. CARGILL. Yes, sir.

Mr. CURTIS. They have to have a rating for that job at that particular place; isn't that true? It is not a different group down there every day?

Mr. CARGILL. It could be.

Mr. CURTIS. But is it?

Mr. CARGILL. No. I think there was a list there, that Mr. Dewey mentioned, that there were 35 regular employees. I may have that figure wrong, Mr. Dewey.

Mr. CURTIS. I think it was 53, just turned around.

Mr. DEWEY. 53 regular post-office clerks.

Mr. CARGILL. They would be the regulars, and very likely they would be assigned there day after day.

Mr. CURTIS. They would be assigned there day after day, and while they were assigned there, they would have no duties that they were bound to perform at the main post office, would they?

Mr. CARGILL. But they would be subject to the postmaster's direction as to assignment at any time.

Mr. CURTIS. Now, what was the last day that the full force worked at the post office in Ward's store?

Mr. CARGILL. It is my understanding it was on April 13.

Mr. CURTIS. And how many worked?

Mr. CARGILL. On that particular day there were 75.

Mr. CURTIS. Now, on that last day of work, how much idleness was there in the post office in Ward's store?

Mr. CARGILL. On that day?

Mr. CURTIS. How many of them did not have anything to do, and for how long a time?

Mr. CARGILL. I am not prepared to say, sir. I do not know.

Mr. CURTIS. Were any of them idle that you know of?

Mr. CARGILL. I have no personal knowledge of whether there was any loitering or loafing, or anything like that. The only information I have is on that particular afternoon when Mr. Kirby came into the post office and stated that there were 4,500 sacks that had piled up there, that they were unable to get out of the plant, that their contractor or the employees of their contractor had refused to go through the picket line and they did not know what they were going to do, and said they wanted us to get those 4,500 sacks out; those 4,500 sacks were gotten out on the night of April 13, and the report I have is that at 1:45 on the morning of April 14, all of that mail had been dispatched from the Ward plant.

Mr. CURTIS. Did you get any report from any source that the post office employees at Ward's were idle and had nothing to do?

Mr. CARGILL. The only report I had was that the postmaster, based on the information and facts before him, had ordered 70 of those employees back to the main office, and had put them to work at things there at the main office.

Mr. CURTIS. Did any report ever come to you, or anyone else in the Department, that when you had employees in Ward they did not have anything to do?

Mr. CARGILL. That is the reason they were withdrawn, because they were not able to get this mail out.

Mr. CURTIS. I understand, but did anyone ever send you a report that this office was overstaffed, that they were not doing anything?

Mr. CARGILL. No, sir.

Mr. CURTIS. Or that there were 10 or 20 men, or all of them that did not have anything to do?

Mr. CARGILL. No, no such report as that came in to me.

Mr. CURTIS. So far as you know they were all busy clear up to the time they were withdrawn?

Mr. CARGILL. Every man we have assigned there should be kept busy. If any man was not busy it was the postmaster's duty to withdraw that man.

Mr. CURTIS. Now, if a patron of a post office decides to change the method of receiving his mail—

Mr. CARGILL (interposing). Is this an individual?

Mr. CURTIS (continuing). There is no notice required of that, is there, if any number days?

Mr. CARGILL. No. Is this an individual you are talking about?

Mr. CURTIS. A business or an individual.

Mr. CARGILL. All right. Now, if it is a business as big as Montgomery Ward & Co., they would certainly come down to us and try to make arrangements, because there are 43 to 48 sacks of mail a day coming in there.

Mr. CURTIS. I am talking about your postal rules and regulations. Do they provide any waiting time if an individual or business wants to change their method of receiving their mail?

Mr. CARGILL. No, they do not have to give any advance notice. It is just a matter of how quickly we can arrange to have the distribution made and get the change-of-address cards over to the carriers and to the various stations, and so forth.

Mr. CURTIS. It is effective immediately when it is requested?

Mr. CARGILL. As quickly as we can do it.

Mr. CURTIS. Now, are there any published rules, regulations or laws of the Post Office Department dealing with the delivery of mail in time of strike?

Mr. CARGILL. Except our policy on the handling of mail.

Mr. CURTIS. I am not talking about your policy. I say, do you have any published rules or regulations?

Mr. CARGILL. Well, the only law that I have on that, I gave you a reference to in my opening statement.

Mr. CURTIS. I mean specifically on strikes. Do you have any published rules, regulations or laws on that?

Mr. CARGILL. Nothing except our precedent files at the post office.

Mr. CURTIS. Each post office is supplied with a book called the Postal Laws and Regulations, and also the Postal Guide. You can find them in any post office, can you not?

Mr. CARGILL. Yes, sir.

Mr. CURTIS. There is nothing in there about handling the mail in time of strike, is there?

Mr. CARGILL. I do not recall right now. I do not think there is. So far as I recall, there is nothing in there. You may have something you are leading up to, but I do not know what it is at the moment. I would have to refresh my memory before I can talk to you about it.

Mr. CURTIS. But it is the policy or the rule of the post office to change the method of delivering mail in time of emergency, is it not?

Mr. CARGILL. Well, our policy is we make no change at those distressing periods of time.

Mr. CURTIS. All right. I have before me here the Postal Laws and Regulations, and section 776 paragraph 3 states:

A postmaster at whose office mail matter in transit is lying delayed by flood or other casualty which has made the mail route impassable may deliver such matter to the parties address upon their personal or written applications and identification, or may deliver all of the mail for a particular office to which mail cannot be regularly carried on account of such casualties upon personal application of the postmaster or a sworn employee of such office.

That is still the regulation, is it not?

Mr. CARGILL. Yes.

Mr. CURTIS. Paragraph 7 says:

Ordinary mail matter in transit to an intermediate post office which is supplied by closed pouch by rural carrier may be delivered from the distributing office on Sundays and holidays or in an emergency, when the office is open to the public, upon addressee's personal or written application, with satisfactory identification.

That is still the rule, is it not?

Mr. CARGILL. Yes, and I think that is good law.

Mr. CURTIS. Yes. In other words, the rules of the post office are that you can change the manner of delivering mail in an emergency, and the main purpose is to get the mail through; isn't that right?

Mr. CARGILL. It has always been the policy of the Post Office Department to expedite delivery at any time that it possibly can.

Mr. CURTIS. Yes. And paragraph 8 provides:

Ordinary mail matter in transit to a post office receiving special supply may be delivered from the distributing office upon addressee's personal or written application with satisfactory identification.

That is still the rule, is it not?

Mr. CARGILL. I think that is all right. I think that is good law.

Mr. CURTIS. And paragraph 9 provides:

Ordinary mail in transit to a post office located on a star route may in cases of emergency be delivered from the distributing office upon the personal or written application of the addressee, with satisfactory identification.

I do not contend that all these apply specifically. I am talking about the general policy of the rule.

Is it not true that there was some mail at the post office in Ward's which had been sacked and distributed by post-office employees during the day of April 12 which was not sent out in the regular manner and had to be transported out afterwards by Ward's employees?

Mr. CARGILL. It is my understanding, sir, that all the mail that was accepted by post-office employees up to and including the 13th, everything that was accepted by them up to that time, was delivered in the regular course, and that on the evening of the 13th there were 4,500 sacks that were in the plant waiting for distribution, and at 1:30 or 1:45 a. m. on the morning of April 14 the last bit of that mail was distributed and sent to the railroad stations or to the post office for proper handling.

Mr. CURTIS. Now, as I understand you, if the mail reaches the hands of a postal employee and he accepts it as a postal employee, from then on the Postal Service is responsible for its delivery.

Mr. CARGILL. It is United States mail, then; yes, sir.

Mr. CURTIS. Now, if the employees had been retained at Ward's so that orders for merchandise needed by farmers and others over the country could have been wrapped and given to those postal employees, it would have had to have gone through, would it not, if humanly possible and reasonable?

Mr. CARGILL. If it was within reason, it would have.

Mr. CURTIS. Now, by taking the employees out Ward & Co. were then unable to place that responsibility on the Government, were they not?

Mr. CARGILL. Just a moment. The postal employees stayed right on their job, accepted all mail matter that was presented to them until Montgomery Ward broke down and could not deliver that mail from the Montgomery Ward plant to the railroad stations, which was part of their agreement and part of their contract.

Mr. CURTIS. Is it not true that Ward employees had to go in there and do the sorting and the sacking of the mail that is all ordinarily done by Government employees?

Mr. CARGILL. You mentioned mail. It is not mail until it is accepted.

As to the sorting of parcels, I do not think a single employee of Montgomery Ward & Co. knows the scheme of Illinois, Indiana, or any of the other States there, Michigan, Wisconsin. I do not believe any Montgomery Ward employee even though he works in the mail room, could distribute the mail according to the scheme of the Post Office Department. I may be wrong, there may be some exceptions; you may have some former post office employees that work there.

No one else except a postal employee would have any right to accept the mail. Every bit of mail that comes in has to be accepted over the counter, weighed, rated; we do that to protect the revenues of the Government Department.

Mr. CURTIS. You do not contend there was not merchandise there to be mailed each day during all this trouble?

Mr. CARGILL. Well, they run a big plant out there. I do not know the different types of merchandise they would want to mail. They possibly would want to ship baby chicks, they possibly would want to ship perishable matter, they would rather hand it to the Post Office Department and say, "All right, you take them and let the chicks die on your hands." They would probably want to insure all this stuff and let you take the responsibility. That applies not particularly to baby chicks, but to any other perishable goods. I do not know that there was any offered at that time; I am using this just as an illustration. Certainly, if they wanted to get that stuff mailed out under those conditions to fulfill our part of the contract, then our part of the contract is ended, too.

Mr. CURTIS. Did any report ever come to you to the effect that there was not any merchandise to be shipped out of Ward's?

Mr. CARGILL. Oh, they had a store full of merchandise, Mr. Curtis.

Mr. CURTIS. I mean that had been ordered.

Mr. CARGILL. I imagine they had orders, because we were delivering their mail to them, and we were delivering 48 pouches a day to them, and I imagine a great quantity of the mail contained orders, so I know they had orders.

Mr. CURTIS. I cannot understand why there was not any work for the individuals to do there.

Mr. CARGILL. There could have been plenty of work in the office, I guess, but the men were out on strike.

Mr. CURTIS. But the order department were filling the orders, were they not?

Mr. CARGILL. That I do not know, sir. Evidently, they filled some, because through channels that we knew nothing about they did get some parcels to the post office downtown and they were accepted.

Mr. CURTIS. But the employees were not withdrawn from Ward's because of any information that the Post Office Department received to the effect that orders were not being prepared for mailing?

Mr. CARGILL. Well, the postmaster was on the ground there, and when he said they did not have any work for them to do, I would have to take the postmaster's word for it. They had no way of getting these parcels out of the plant.

The CHAIRMAN. Mr. Cargill.

Mr. CARGILL. Yes, sir.

The CHAIRMAN. Let us summarize this thing a little bit.

As I understand it, it is not your contention that the postmaster took these employees out of Ward's because Ward's was not filling orders, but he took them out because under the contract existing between the Department and Ward's it was the duty of Ward's to transport the mail from the plant to post office or the railroads.

Mr. CARGILL. That is correct, sir.

The CHAIRMAN. And when Ward's could not fulfill that contract because their drivers refused to cross the picket line, it was impossible for the clerks in that station or unit to accept the responsibility of receiving any further mail at that point, is that correct?

Mr. CARGILL. That is correct, sir.

The CHAIRMAN. Now, it happens that I worked once in the House Post Office over here in the Old House Office Building, I was chief clerk in that office. We had 31 employees besides myself, and the postmaster and assistant postmaster. It was the custom at that time for the employees of the House Office Building, who are employees of the Congress, to go to the Washington City post office and get all the mail for the Members of Congress. That is still the custom, is it not?

Mr. CARGILL. I think it is.

The CHAIRMAN. And under the policy of the Post Office Department, if the drivers who have authority to go there and get that mail refuse to transport it, the mail would stay in the Washington City post office until some other arrangement was made, would it not?

Mr. CARGILL. Yes, sir.

The CHAIRMAN. Somewhat similar to this arrangement here, except in this case you had the regular employees of the Chicago post office assigned to work in space provided by Montgomery Ward; that is correct, is it not?

Mr. CARGILL. That is correct.

The CHAIRMAN. The responsibility of the Post Office Department began the minute those regular clerks of the Chicago office working in Ward's plant accepted a parcel or a letter; isn't that true?

Mr. CARGILL. That is correct, sir.

The CHAIRMAN. And it is then the duty of the Post Office Department to see to it that that mail continues to its destination.

Mr. CARGILL. Yes.

The CHAIRMAN. It was part of the agreement that Montgomery Ward had a contractor with trucks, approved by the Post Office Department, the drivers of those trucks having taken the oath of office and being approved by the Post Office Department, whose duty it was to transport that mail matter having been received by the regular clerks, to the railroad or to the Chicago post office?

Mr. CARGILL. That is correct.

The CHAIRMAN. That was the arrangement, was it not?

Mr. CARGILL. Yes, it was.

The CHAIRMAN. And the reason you took the clerks was because Montgomery Ward was unable to fulfill its agreement for the transportation of the mail accepted by those clerks?

Mr. CARGILL. That is correct, sir.

The CHAIRMAN. Now, you stated in your opening statement, as I recall it, that the Postmaster General did not have authority to refuse to handle mail during a strike. Is that a law, a regulation, or what is it?

Mr. CARGILL. That is a law, Mr. Ramspeck, and I think I have it right here. I can quote that law for you. It is 39 U. S. C. 492, "Discontinuing service on post roads."

It states:

Whenever in the opinion of the Postmaster General the postal service cannot be safely continued or revenues collected, or the laws maintained on any post road, he may discontinue all service on such road or any part thereof until the same can be safely restored.

The CHAIRMAN. Now, in the case of the Montgomery Ward matter, as I understand your testimony, on April 13, the day the strike

started, your information is that there were 4,500 sacks of mail in that unit in the Montgomery Ward plant.

Mr. CARGILL. Yes.

The CHAIRMAN. That mail having become mail because it had been accepted by the regular employees of the Chicago office.

Mr. CARGILL. Yes.

The CHAIRMAN. It was there, and the contractors whom Montgomery Ward agreed to furnish to the Post Office Department refused to move it; is that correct?

Mr. CARGILL. That is correct; sir.

The CHAIRMAN. The Post Office Department then moved that mail through the picket line, did it not?

Mr. CARGILL. The 4,500 sacks, everything that had been accepted up to that time.

The CHAIRMAN. Because it was the responsibility of the Post Office Department because it had been accepted by the regular postal employees and had become mail matter?

Mr. CARGILL. Yes, sir.

The CHAIRMAN. What happened was, that the postmaster, acting under the policy of the Department, refused to accept any more mail after that, because it could not be transported out of the Montgomery Ward plant in accordance with the agreement.

Mr. CARGILL. That is correct, sir, in the manner in which it had been handled prior to that time.

Mr. DEWEY. I think there is a little item that should be further explained. You said 4,500 sacks were moved through the picket lines. According to the memorandum that I received there must have been at least part of those 4,500 sacks that were moved in another way, because it was on the evening of April 12 that 1,470 sacks of mail and 990 outside pieces were loaded in three boxcars which were switched via the Milwaukee Railroad to the union station. All of this mail had been sacked and distributed by post office employees during the day of April 12. The Union Depot Co. passed these sacks across the platform to the Chicago office.

On the evening of April 13 the Ward employees loaded 3,854 sacks of mail and 2,100 outside pieces into 6 boxcars which were similarly handled, and on the 14th they loaded 2,824 sacks of mail and 704 outside pieces and 1,230 c. o. d. parcels onto 4 boxcars.

The interesting thing to me is apparently there was no interruption at all in the handling of a great portion of its mail from Ward's via boxcars on the Milwaukee Railroad and across the platform into the post office. There was never any interruption in that, and that was one of the reasons that shows there was a lot of work to be done. There was no danger, and just why that course was interrupted, I do not understand, because apparently there was no picket line or anything as far as those boxcars were concerned, because they moved all the time continuously.

Mr. CARGILL. It is rather strange to me, and, frankly, I am not going to be able to explain that to you. I do not know how Montgomery Ward could have taken mail that we had turned over to them in locked sacks and turned it over to unauthorized persons. We would have balked on that and we would have refused to deliver it to them, we would have refused to let them turn it over to unauthorized

persons. We do not know who is in charge of those boxcars. We would have been responsible for it and we would not have turned it over to them. That is something that Montgomery Ward & Co. should explain, as to why they were breaking the agreement with us, that their trucks and their authorized representatives, men who had actually taken the oath of office to truck the mail, why they would accept that from us and then, in devious ways, put it into the boxcars and so forth. I would be unable to answer that question.

Mr. DEWEY. This was on April 12, at the close of business, and then on the 13th. There were two lots.

Mr. CARGILL. That was the night of the 13th.

Mr. DEWEY. The same procedure was carried on apparently right straight on through. They mention the lots on the 13th and 14th; it goes on through up until I believe it mentions the 19th and 20th.

The CHAIRMAN. May I ask a question there?

Mr. DEWEY. Yes, indeed.

The CHAIRMAN. Is it the contention of Montgomery Ward that mail which had been accepted by the employees of the Post Office Department was taken and put in boxcars and transported?

Mr. DEWEY. It is not any contention at all. I asked for just a memorandum as to what happened, and these are the things that I got over the telephone this morning, that I took down over the telephone.

The CHAIRMAN. The point I want to clear up is this: Is it their contention or statement that they took mail which had been accepted by postal employees and put it in boxcars and transported it to the railroad or the post office?

Mr. DEWEY. It says here on the evening of April 12, Ward employees loaded these sacks. We know that the post-office authorities were there on the 12th, and we know that they were there on the 13th.

The CHAIRMAN. That is what I want to clear up. I want to ask Mr. Cargill a question about that.

If that took place, if mail which had been accepted by the postal employees was taken out of their possession by unauthorized people, somebody violated the law, did they not?

Mr. CARGILL. Certainly, we would not have turned it over to unauthorized people, we would have somebody there to protect the mail, somebody that was a sworn employee or had taken the oath of office.

Mr. DEWEY. Mr. Cargill, even during the whole period of the strike there were four or five postal employees there to safeguard the Government property during the whole business, so there was some Government supervisory over there at all times.

Mr. CARGILL. Yes, sir. Those 4,500 sacks were in the post office on the evening of April 13, and that is the evening I understand that Mr. Kirby came down and said they would like to get those sacks out. The report I have here just merely states that these sacks were gotten out of there by 1:30 or 1:45 on the morning of April 14. I was under the impression that they came out by truck and that they came through the picket line. However, that is just my supposition, pure and simple, and I have no details as to that as to just exactly how they came out.

The CHAIRMAN. The point I want to clear up is this: that mail—we call it "mail", it is really not mail until it is in the hands of the Post Office Department employees; is that right?

Mr. CARGILL. That is right.

The CHAIRMAN. Therefore any parcels or letters that were transported by boxcars after April 13, when the employees had been withdrawn, were not mail until they were delivered to the Post Office Department at the Chicago office, were they?

Mr. CARGILL. That is correct, sir.

The CHAIRMAN. That is all. Thank you, Mr. Cargill.

Mr. CARGILL. I want to thank you gentlemen of the committee very much.

The CHAIRMAN. Is Mr. Taylor here?

STATEMENT OF WAYNE C. TAYLOR, UNDER SECRETARY OF COMMERCE

The CHAIRMAN. Mr. Taylor, do you have a prepared statement?

Mr. TAYLOR. Yes; I do, sir.

The CHAIRMAN. Will you give your full name and your title to the reporter?

Mr. TAYLOR. My name is Wayne Chatfield Taylor. Under Secretary of Commerce.

The CHAIRMAN. We will be glad to hear your statement.

Mr. TAYLOR. On the afternoon of April 25, 1944, I was directed by the Secretary of Commerce to proceed to Chicago, Ill., and there to take possession of, and operate, the plants and facilities of Montgomery Ward & Co., Inc., located in that city, pursuant to the terms and conditions of the Executive order of the President of the United States, dated April 25, 1944.

In order that all appropriate legal steps might be taken to establish and maintain possession of the Chicago plants and facilities of Montgomery Ward & Co., arrangements were made for me to be accompanied by a representative designated by the Attorney General of the United States. The Attorney General designated for that purpose Mr. Ugo G. Carusi, his executive assistant. Mr. Carusi and I, together with Mr. Benedict Deinard of the Department of Justice, left Washington late the afternoon of April 25 and arrived in Chicago the next morning. On arrival in Chicago, Mr. Carusi and I met Mr. John D. Goodloe, Special Assistant to the Secretary of Commerce, who had been instructed to meet us in Chicago and assist in any way possible. Accompanied by Mr. Carusi, I arrived at the general offices of Montgomery Ward & Co., Inc., 619 West Chicago Avenue, at approximately 11:50 a. m., Wednesday, April 26. We proceeded immediately to the offices of Mr. Sewell L. Avery, chairman of the board of Montgomery Ward & Co.; there we met Mr. Avery and his attorneys, Messrs. Stuart S. Ball and John A. Barr. I explained to Mr. Avery the nature of my mission and presented to him a certified copy of the President's Executive order of April 25 and a copy of the memorandum of the Secretary of Commerce in which he designated me as his representative and as the operating

manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co. I then read the following statement:

By virtue of the authority vested in the Secretary of Commerce by the President of the United States and Commander in Chief of the Army and Navy of the United States, I, Wayne Chatfield Taylor, Under Secretary of Commerce, do hereby, in the presence of a representative designated by the Attorney General of the United States, take possession in the name of the Secretary of Commerce, for and on behalf of the United States, of all of the plants and facilities of Montgomery Ward & Co. located in Chicago, Ill., including the mail order house, the retail store and the Schwinn Warehouse, together with the real and personal property and other assets of Montgomery Ward & Co. used in connection with the operation of such plants and facilities.

Until further notice, such plants and facilities will be operated by the United States under the control of an Operating Manager for the United States, to be appointed by the Secretary of Commerce.

Possession and operation of the plants and facilities of Montgomery Ward & Co. located in Chicago, Ill., as aforesaid, will be terminated by the Secretary of Commerce at such time as he may find that possession and operation thereof by the United States are no longer required for the successful operation of the war.

I also delivered to Mr. Avery a letter addressed to him by the Secretary of Commerce, a copy of which is attached and marked "Exhibit A."

I then explained to Mr. Avery that my instructions were to ask for his full cooperation as well as that of the officials and staff of Montgomery Ward & Co. and that, for my part, I would do everything possible so that the Government operation of these plants would cause as little disruption as possible in their normal operations.

Messrs. Avery, Ball, and Barr stated that they had definitely concluded that the President was without authority to issue the Executive order which authorized and directed the Secretary of Commerce to take possession of and operate their Chicago plants and facilities, and hence their position was that the Executive order and all action growing out of it had no legal standing. Therefore, they repeatedly stated that they could neither agree to cooperate with me in carrying out my instructions nor to recognize that the United States Government was in legal possession of the plants.

We had a somewhat lengthy discussion in which they elaborated their position and during which I attempted to ascertain what further steps should be taken to carry out my instructions. Mr. Avery made the very definite statement that he would not surrender possession of the plants inasmuch as he did not consider that, as the chief executive of the company, he could legally do so because of his duties and responsibilities to the stockholders. In this connection, he indicated that he would never consent to the Government's taking possession of the plants and that if the Government wished to obtain possession, it would have to do so by force. I told Mr. Avery that under the circumstances I wished to obtain further instructions from the Secretary of Commerce, whereupon Mr. Carusi and I left the offices of Montgomery Ward & Co. and proceeded to the United States attorney's office in Chicago.

After returning to the United States Attorney's office, we were in more or less constant telephone communication with the Secretary of Commerce, the Attorney General and others during the course of the afternoon. We explained the situation as completely as possible and emphasized Mr. Avery's unyielding position and informed our principals in Washington that Mr. Avery had given every indication that he wished to be removed from the building by force; also that while

there would be no actual resistance of any kind to the Government representatives, in order to establish the Government in possession, at least certain token moves indicating force would be necessary. After conferring with the Secretary of Commerce and the Attorney General, we decided to ask for the assistance of the United States Marshal and several deputies and to return to Montgomery Ward & Co. to see if such show of force were adequate. I then returned to the offices of Montgomery Ward accompanied by Mr. Carusi, Mr. Goodloe, the United States Marshal and eight deputy marshals. We immediately went to the office of Mr. Avery, and, in the presence of those who accompanied me and Messrs. Ball and Barr, who were again with Mr. Avery, I explained that the Secretary of Commerce had instructed me to secure assistance from the United States Marshal's office and to return to the plant and to use whatever force was necessary to carry out my instructions, namely, to definitely establish possession of, and, on behalf of the United States, to operate such plants until further notice. Mr. Avery's response was much the same as that of the preceding visit except that he pointed out that at noon, when he said the Government of the United States could get possession of the Montgomery Ward Chicago plants only by force, he had meant actual force and not a showing of force such as the presence of the marshals.

He again indicated that he could not recognize me or any of the gentlemen with me as having any lawful authority to issue any instructions to him or to any of the employees or officials of Montgomery Ward & Co., or to take any part whatever in the operation or management of the affairs of the company. Mr. Avery especially pointed out that he did not recognize the authority of the United States Marshal as the latter was an officer of the Federal Court and could act only under the instructions of the Court. At this point, Mr. Carusi left Mr. Avery's office, and there followed an interval during which we received every confirmation that the officials of Montgomery Ward & Co. were adhering to their original position.

After approximately 30 minutes, I received a call from Brigadier General Davis of the Sixth Service Command, seeking confirmation of a request he had received to dispatch troops to the plant with instructions to the officer in charge to report to me, General Davis having previously been authorized by the Under Secretary of War to provide troops under the terms of the Executive order. I told him that I had not requested the troops and asked him to have the troops stand by until he received further instructions from me. A few minutes later I met Mr. Carusi who wanted to know what was delaying the troops. I told him of my telephone conversation a few minutes earlier with General Davis. Mr. Carusi stated that the question of the use of the troops had been thoroughly cleared by telephone with the Secretary of Commerce, the Attorney General, and the Under Secretary of War, and that it was necessary to send for the troops immediately as the United States Government must be firmly established in possession of the plant that evening. I then called General Davis back on the telephone and requested him to send the troops and have the commanding officer report to me on the eighth floor. Subsequently, at his request, I gave General Davis written confirmation of my telephone request for the troops. A copy of this confirmation is attached and marked "Exhibit B."

The detail of troops, consisting of 44 men, in charge of Lieutenant Pincura, arrived about 6:45 p. m., and Lieutenant Pincura immediately reported to me on the eighth floor. I explained to him that there was no disorder and that, in my opinion, it would be necessary merely to establish and maintain the possession of the Government, and that I would give him more detailed instructions after he had announced to Mr. Avery that the Army was carrying out the instructions of the Secretary of Commerce in establishing Government possession of the plants. We then entered Mr. Avery's office. Lieutenant Pincura stated that in the name of the United States he was establishing Government possession and that he understood his instructions to be to remove Mr. Avery immediately and otherwise to carry out such instructions as I might give him. Mr. Avery demanded to know if he was being evicted. The lieutenant replied in the affirmative, but I corrected him immediately by saying that I had not given any instructions to remove Mr. Avery from the premises and that Mr. Avery was free to come and go as he pleased, and then repeated the instructions that I had actually given Lieutenant Pincura, namely, that he and the troops under his command were to assure physical possession of the plant by the United States Government and to maintain order if necessary. Mr. Avery then indicated that it was already past his usual time to leave the office and that he would be leaving anyhow in a few minutes. A few moments later he left the office accompanied by Messrs. Ball and Barr.

After Mr. Avery's departure, I amplified my instructions to Lieutenant Pincura and told him that he was to permit the regular plant security force to function normally and to assist the regular plant security men only in case of disorder.

A military guard was immediately established at the main entrance and troops dispatched through the building, with instructions to protect the property and all persons employed or seeking employment therein, and to interfere in no way with any one entering the building on legitimate business. With the assistance of the troops and representatives of the United States marshal's office, appropriate notices to the effect that the plants were now in the possession of and being operated by the United States were posted at all entrances in the building and at other appropriate places within the building. Lieutenant Pincura was instructed to continue to thus employ a detail of troops on a 24-hour basis and to hold himself ready to carry out such further instructions as I might issue.

After giving the necessary instructions to Lieutenant Pincura, whom I left in charge of the plant, we left the building.

I returned to the main office of Montgomery Ward & Co. at about 7:45 a. m., April 27, 1944, accompanied by the Hon. Francis Biddle, Attorney General of the United States; his executive assistant, Mr. Carusi, Mr. Hugh B. Cox, Assistant Solicitor General of the United States, and Mr. Goodloe. Neither Mr. Avery nor any of the other officials of the company had at that time reported for work. The first one I was able to contact was Mr. H. L. Pearson, vice president and treasurer, who in the presence of the Attorney General, Mr. Carusi and Mr. Goodloe was asked by me to explain the organizational set-up of the accounting and fiscal operations of the company.

I stressed the importance of this in order that appropriate steps might be taken for the purpose of making such changes in the books as would be necessary to show separately the operations of the company during the period of Government operation. Mr. Pearson was explaining the organization of his office and the functions of the general comptroller, mail-order comptroller, and retail comptroller, and their respective staffs, all of which are under his supervision, when Mr. Barr came to the door and advised Mr. Pearson he was wanted on the telephone. When Mr. Pearson returned he stated he had been advised to furnish no information to me or any of my assistants, nor to carry out any instructions that I might issue. He stated that he regarded Mr. Avery as his superior and still in charge of the affairs of Montgomery Ward & Co., and he was receiving his instructions only from or through Mr. Avery. In response to the inquiry of the Attorney General, Mr. Pearson refused to say who had advised him. The Attorney General then specifically asked Mr. Pearson if he would permit accountants, representing me, who were shortly expected to arrive, to examine the books of Montgomery Ward. He stated emphatically he would not do so unless instructed to do so by Mr. Avery.

The next officials of Montgomery Ward & Co. to arrive at the plant, or at least the next ones with whom we were able to communicate, were Messrs. Ball and Barr. Each denied that he had instructed Mr. Pearson not to cooperate with me or furnish me with any information concerning the books or records. The Attorney General asked them for assurance that they would not instruct Mr. Pearson or any other officer or employee of the company to refuse to cooperate with me or to comply with my instructions. They refused to give any such assurance. About this time, the accountants, who had been expected, arrived, and Mr. Pearson again, in their presence, refused Mr. Goodloe's request that they be permitted access to the books and records of Montgomery Ward & Co.

Almost precisely at 10 o'clock, Mr. Avery arrived at his office, accompanied by Messrs. Barr and Ball. I introduced the Attorney General (Mr. Cox having left before Mr. Avery's arrival). I explained that the Attorney General was there to give me such legal advice and assistance as I might need; that I planned to remain in possession of the plant and facilities and to continue to operate them and would permit no further interference or refusal to comply with my instructions on the part of Mr. Avery or any other officer or employee of the company. Mr. Avery stated that he considered the Executive order and all the acts taken pursuant thereto as being illegal and denied that the United States Government was in possession of the plant. In response to inquiries, principally by the Attorney General, he stated that he would not comply with my instructions and that he considered himself as still being in full charge of the plants and facilities of the company. He then specifically refused our request that he call a meeting of his staff so that we might talk with them. He also refused to permit me or my accountants to inspect the books and records, whereupon I asked Mr. Avery to leave and not return until his attitude had changed. Mr. Avery declined to leave and said he would do so only if he was forced to, and by force he meant if he was actually bodily carried out of the building.

After consultation with the Attorney General, I instructed Major Weber to remove, or cause to be removed, Mr. Avery from the building and not to permit his return. Major Weber turned to Mr. Avery and said since he must carry out these instructions he hoped Mr. Avery would just walk out with him. Mr. Avery refused to do so and repeated his remark about not leaving unless carried out bodily. At this point several soldiers, at Major Weber's command, carried Mr. Avery from the office and out of the building.

Shortly thereafter the Attorney General and I called representatives of the press and described the events of the morning. My statement to the press was as follows:

I think you are all familiar with the events so far, so I won't go over them. This morning the Attorney General arrived in Chicago to advise me, as the operating manager for the United States of Montgomery Ward & Co. All the actions which have taken place this morning have been on his advice, and I would like to indicate something you already know—that it has been our desire in every way possible to obtain the cooperation of Mr. Avery and all the members of his staff. Unfortunately that was not possible. We intend to operate this plant, and the other plants of Montgomery Ward & Co. which may appear to be necessary, and hope that we are able to accomplish that without any loss of efficiency, without any financial hardships on the part of the stockholders, and certainly without any interruption of efficient deliveries to customers of Montgomery Ward & Co.

I think at this time I would like to ask the Attorney General to describe to you the legal aspects, or anything he wishes to tell you about the events of this morning.

The Attorney General's statement was as follows:

As you know, the United States Government has been in possession of this plant since yesterday afternoon under an Executive order of the President, directing the Secretary of Commerce to take charge. I want to stress again what Mr. Taylor has said, that the Government is very anxious that there should be no loss of efficiency or any loss to stockholders. When Mr. Avery came in this morning, I asked him if he would cooperate and turn over the books to our bookkeepers who were here, and are here now, in order that they would have proper information for setting up a new set of books.

He refused to do this and would not cooperate in any way. I asked him to call a staff meeting to explain to the staff what our purpose was and to persuade the staff to go on to operate the company. Mr. Avery refused and said he would not cooperate with us in any way. Therefore, we told Mr. Avery he would have to leave the premises.

Mr. Avery refused to do that at Mr. Taylor's request, and Mr. Taylor therefore directed Major Weber to conduct Mr. Avery out of the plant. Mr. Avery refused to leave and had to be carried out.

I think there is nothing more for me to say.

After the press conference, I sent word by Major Weber to Mr. Clement B. Ryan, President of Montgomery Ward & Co., that I would like to see him at his convenience. Major Weber reported back that Mr. Ryan said he was too busy in a conference and I sent word back that I would like to see him at his earliest convenience, but in any event by 12:30.

The word that I received back was that he would not see me at all, notwithstanding the fact that it had been made perfectly clear to him in writing that Mr. Biddle and I wished to talk to him informally, either alone or with such of his staff as he wished to bring, about the steps which should be taken so that the operations of the company might be continued in a normal manner without interruption of deliveries to customers or losses to stockholders; also, that his presence in my office was not requested for the purpose of giving him any orders or directions. A copy of my communication to Mr. Ryan in this regard is attached and marked "Exhibit C."

The Attorney General and I had some discussion of further steps which should be taken and then proceeded to the United States attorney's office where the Attorney General and I reported the events of the morning to Secretary Jones, describing the complete impasse which still existed at the plant and general offices. I was instructed to send a verbal message to Mr. Ryan that if his continued failure to communicate with us indicated that he would not cooperate with me as the operating manager of the United States, he would not be admitted to the plant except for the purpose of attending the annual stockholders' meeting the next day as long as his attitude remained unchanged. A similar message about permitting his attendance at the stockholders' meeting was transmitted to Mr. Avery through his secretary.

Early in the afternoon Mr. Carusi, Mr. Goodloe, a small staff of accountants and I returned to the general offices, to continue our attempts to establish a basis for the Government operation of the Chicago facilities and to renew our efforts to secure the cooperation of the officials of Montgomery Ward & Co. Mr. Goodloe was able to arrange some purely informal conversation with the accountants and Mr. Pearson in order to obtain some general knowledge of the types of accounts and the possibility of segregating the operations of the Chicago plants from those in other locations.

About 4:30 p. m., we received word that the Attorney General wished to see Mr. Goodloe and me in the United States Attorney's office immediately. On arrival, at the United States Attorney's office, Mr. Goodloe and I were informed that it had been determined to take legal steps to prevent any further interference on the part of Mr. Avery and other officials of Montgomery Ward & Co. in the Government's possession and operation of the Chicago plants and facilities, and I therefore prepared and signed an affidavit which the Attorney General said would be needed in connection with the court proceedings. We then met with certain representatives of the union—Mr. Samuel Wolchok, president, and Leonard Levy, executive vice president, United Retail, Wholesale and Department Store Employees of America, C. I. O., Henry B. Anderson, president, and Mr. Heisler, attorney, Local 20. After a full discussion, I decided that I should, as the operating manager for the United States, make some statement with reference to steps that would be taken to carry out the provisions of the Executive order with regard to compliance with the directive orders of the War Labor Board. The Attorney General agreed that such a statement by me would be desirable and the next day such a statement was made and posted on the bulletin boards of the various plants of Montgomery Ward & Co. in Chicago. A copy of this statement is attached, marked "Exhibit D."

That night Judge Holly, in Federal court, issued the restraining order requested by the Attorney General. Thereafter, with the exception of Mr. Barr, I do not believe that any of the other officials named in the restraining order, returned to their offices and in any case we were able to communicate with them only through their secretaries or by telephone.

We reported the situation to the Secretary of Commerce and he approved our recommendation that the situation remain in status quo as far as possible until a decision was announced by the court; however, that it was imperative that adequate steps be taken immediately

so that the corporate books and records of Montgomery Ward & Co. should reflect accurately the operations of the company during the period of Government possession and operation. That evening Mr. Goodloe, Mr. Royall and I discussed the preparation of a letter to be sent to Mr. Pearson, vice president in charge of finances, which would serve to carry out the preliminary steps to establish a basis for the Government possession and operation of the properties covered by the Executive order. A copy of the letter to Mr. Pearson is attached, marked "Exhibit E."

The next morning (Saturday) about 10:45 a. m., the Attorney General called and suggested for my consideration the release of the troops, in view of the fact that the restraining order had been issued and presumably would remain in effect until the court's decision was announced. He read me a suggested statement which I might use after giving the order for the withdrawal of the troops. Shortly after 11 o'clock I called General Davis and requested that the troops be withdrawn. I later confirmed this order in writing, copy of which is attached, marked "Exhibit F." I released the statement to the press and at the press conference announced the appointment of Mr. Goodloe as grievance officer. A copy of the statement in connection with the withdrawal of the troops is attached, marked "Exhibit G."

Following the argument of the case in court which was concluded late Tuesday, I reported to the Secretary of Commerce that I did not believe there would be any further significant developments pending the court's decision which was expected the following Monday, and in view of the lull which then existed, it would be desirable for me to proceed to Washington in order to fully inform him and others about all aspects of the situation but primarily to plan alternative steps which should be ready for immediate execution when the court announced its decision. It was necessary for Mr. Goodloe, acting as grievance officer, likewise Mr. Royall, who was in charge of establishing bases and methods for Government operation, to remain in Chicago. I arranged to have Mr. Goodloe act as my duly accredited representative during my absence.

Mr. Goodloe, Mr. Royall and I, during the previous days, had made repeated attempts to meet with representatives of the company in order to take adequate steps so that the corporate books and records of the company would reflect accurately the operations of the company during the period of Government possession and operation. Inasmuch as we had met with no success in these efforts, on May 3, 1944 I wrote a memorandum to Mr. Stuart S. Ball, Secretary of Montgomery Ward & Co., and to Mr. John A. Barr, assistant secretary of the company, copies of which are attached, marked "Exhibit H".

I left Chicago at 3:30 p. m. on May 3 and arrived in Washington the following morning. I reported to Secretary Jones on my arrival and went over with him all aspects of the situation. I laid great stress on the difficulty of operation without cooperation on the part of the management. Both Secretary Jones and I were kept fully informed by Mr. Goodloe and Mr. Royall of the further day-to-day developments in Chicago. These were confined largely to the hearings on grievance cases being conducted by Mr. Goodloe and the action to be taken after the election had been held.

As you know, on Tuesday, May 9, 1944, the Secretary of Commerce issued an order terminating the possession, control, and operation by the United States Government and returned the plants and facilities to Montgomery Ward & Co., as of 7 p. m., central war time, May 9, 1944.

Would you like me to add Secretary Jones' order and the statement which he issued? I have them here.

The CHAIRMAN. Do you have a copy of it?

Mr. TAYLOR. Yes.

The CHAIRMAN. Very well.

(The exhibits and the order referred to are as follows:)

EXHIBIT A

APRIL 25, 1944.

Mr. SEWELL AVERY,
President and Chairman of the Board,
Montgomery Ward & Co., Chicago, Ill.

DEAR MR. AVERY: By Executive order, a copy of which is attached, the President of the United States and Commander in Chief of the Army and Navy of the United States has authorized and directed me, through and with the aid of any persons or instrumentalities I may designate, to take possession of the plants and facilities of Montgomery Ward & Co., located in Chicago, Ill., including the mail-order house, the retail store and the Schwinn Warehouse, together with the real and personal property and other assets of Montgomery Ward & Co. used in connection with the operation of such plants and facilities and to operate or to arrange for the operation of such plants and facilities and under the terms and conditions of the directive orders of the National War Labor Board, dated January 15, 1944, and April 5, 1944, and otherwise in such manner as I deem necessary for the successful prosecution of the war.

I have designated Wayne Chatfield Taylor, Under Secretary of Commerce, and have authorized him in my name, to take possession, on behalf of the United States, of the aforesaid plants and facilities of Montgomery Ward & Co., and, after he has done so, to deliver this communication to you in the presence of a representative designated by the Attorney General of the United States.

Subject to such instructions as may be issued by Mr. Taylor, the ordinary operating staff members of Montgomery Ward & Co. are retained in their respective capacities in the aforesaid plants and facilities. The officers of the company shall not be retained except as expressly authorized by Mr. Taylor. Pending receipt of such further instructions, you and the other officers and employees of Montgomery Ward & Co. are directed to comply forthwith with the directive orders of the National War Labor Board, dated January 15, 1944, and April 5, 1944, but otherwise to continue to perform your usual functions and duties in connection with the operation of the aforesaid plants and facilities.

You are directed to fly forthwith the flag of the United States of America on each of such plants and facilities and to post forthwith at all entrances and at appropriate places within each of such plants and facilities, a notice in the form attached hereto, marked "Exhibit A."

You are directed to take appropriate action to cause books to be set up so as to keep separate the records with respect to the operation of such plants and facilities during the period of Government operation.

You are directed to issue immediately to all officials and to the managers or other persons in charge of each of such plants and facilities, notice in the form attached hereto, marked "Exhibit B."

In order that there may be as little disruption as possible in the normal operation of the Chicago plants and facilities of Montgomery Ward & Co. during the period of Government operation, and that possession, control and operation of such plants and facilities may be restored to the management of Montgomery Ward & Co. as quickly as possible. I sincerely hope that I may have the full cooperation of you and the other officials of Montgomery Ward & Co. in carrying out the directions contained in this letter.

Sincerely yours,

JESSE H. JONES,
Secretary of Commerce.

EXHIBIT B

APRIL 26, 1944.

COMMANDING GENERAL,
Sixth Service Command.

SIR: This will request you to furnish me with a sufficient detail of troops to take possession of such plants and property of Montgomery Ward & Co., in Chicago, Ill., as I may specify.

This request is in pursuance to an Executive order of April 25, 1944, authorizing the Secretary of Commerce to take possession of these plants and facilities. I enclose a copy of the order and a copy of a notice distributed to the officials of the company. I shall later advise you how long it will be necessary to supply me with the troops requested.

Respectfully,

Operating Manager for the United States.

EXHIBIT C

APRIL 27, 1944.

MR. CLEMENT B. RYAN,
President, Montgomery Ward & Co., Chicago, Ill.

MY DEAR MR. RYAN: I sent word down through Major Weber that I should like to see you at your convenience. You told the Major first that you were too busy in a conference and finally that you would not come up to see me at all.

I think I should tell you why Mr. Biddle and I would like to talk to you. We are very anxious that the operation of the company be carried on without any loss either to stockholders or customers of the company. We believe that an arrangement can be worked out that would be mutually satisfactory in this respect. The purpose of the meeting is not to give you any orders or directions but to discuss informally the matter with us. After the meeting you can take it up with your staff or anyone else you wish. We should be glad to talk with you personally or with the other executives of Montgomery Ward.

I should appreciate, therefore, very much if you would name a convenient time within the next hour when we could see you.

Yours very truly,

WAYNE C. TAYLOR,
Operating Manager for the United States.

EXHIBIT D

MONTGOMERY WARD & Co., CHICAGO, ILL.—STATEMENT OF UNDER SECRETARY WAYNE C. TAYLOR, OPERATING MANAGER FOR THE UNITED STATES OF MONTGOMERY WARD & Co.: TO SAMUEL WOLCHOK, PRESIDENT OF THE UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, C. I. O., AND HENRY B. ANDERSON, PRESIDENT, LOCAL 20, UNITED MAIL ORDER, WAREHOUSE AND RETAIL EMPLOYEES UNION

The President's Executive order of April 25, 1944, authorizing the Secretary of Commerce to take possession of and operate the plants and facilities of Montgomery Ward contains a provision directing the Secretary of Commerce to operate the plants and facilities of the company under the terms and conditions of the directive orders of the National War Labor Board, dated January 15, 1944, and April 5, 1944. These orders directed the local union and the company to extend the provisions of the collective-bargaining agreement which included provisions for union security, arbitration of employee grievances and seniority. The orders also provided that the collective bargaining agreement, which expired on December 8, 1943, should be extended for a period of 30 days from January 13, 1944, on the condition that if, within that period, the parties agreed for a deter-

mination by the National Labor Relations Board of the representation question; or if the union within that time, petitioned the Board for a determination of the representation question, the contract should be further extended, and should continue to govern the relations between the parties until the determination of the collective bargaining representative of the employees involved, or until further order of the Board.

At the request of the President of the United States, those members of the union who had gone out on strike returned to work. The union has complied with the directions of the War Labor Board. The company, by refusing to deal with the union in accordance with the provisions of the contract as extended by the War Labor Board has not complied with the directions of the War Labor Board, nor with the request of the President that it comply with these orders.

Accordingly, a joint conference has been held between myself and the representatives of the union, to establish and continue the labor relations and the working conditions provided for by the contract and by the orders of the War Labor Board. Therefore, the relationship between the employer and the union has been re-established and it is hoped that in the immediate future, satisfactory plans will be worked out.

I will, therefore, promptly appoint a representative who will act as a grievance officer, to deal with the union.

The union has assured me of its full cooperation; and therefore it is hoped that the operation of the company by the United States will be continued without further interruption by any officer or employee of the company.

WAYNE C. TAYLOR,
Under Secretary of Commerce,
Operating Manager for the United States of
Montgomery Ward & Co.

APRIL 28, 1944

EXHIBIT E

MONTGOMERY WARD & Co.,
Chicago, Ill., April 29, 1944.

MEMORANDUM FOR MR. HAROLD L. PEARSON, VICE PRESIDENT AND TREASURER

It is imperative that adequate steps be taken immediately so that the corporate books and records of Montgomery Ward & Co. reflect accurately the operations of the company during the period of Government possession and operation, with respect to the plants and facilities located in Chicago, Ill., including the mail order house, the retail store, and the Schwinn warehouse.

Our immediate need is for the general ledger or other general books of account for the purpose of preparing a trial balance of the control accounts. Also it will be necessary hereafter to request that subsidiary records and supporting data be made available from time to time.

As I have emphasized from the outset, it has been our sincere desire to cause the minimum disruption in the normal operations and procedures of the company during the period of Government operation. Accordingly, you may comply with the foregoing request for certain records by making them available for inspection and examination in their present location by my duly accredited accounting representatives, who are immediately available for these duties.

I would appreciate it if you would advise me promptly the most convenient hour today for such representatives to meet with you for the purposes of carrying out this request.

I should like to again emphasize that the purpose of this request is to enable the Government to determine the best and most expeditious means of establishing and maintaining adequate records of the operation of the company during the period of Government possession and operation.

Very truly yours,

WAYNE C. TAYLOR,
Operating Manager for the United States,
Montgomery Ward & Co.

EXHIBIT F

MONTGOMERY WARD & Co.
Chicago, Ill.

APRIL 29, 1944.

COMMANDING GENERAL, SIX SERVICE COMMAND,
20 North Wacker Drive, Chicago, Ill.

DEAR SIR: The need for the troops furnished to me pursuant to my written request to you dated 26 April 1944 having passed you are hereby requested to withdraw the troops from the Montgomery Ward & Company property in Chicago.

Very truly yours,

WAYNE C. TAYLOR,
Operating Manager for the United States.

EXHIBIT G

[Press release, April 29, 1944.]

STATEMENT OF WAYNE C. TAYLOR

I have this morning requested Brig. Gen. John F. Davis to withdraw all of the troops from the plant of Montgomery Ward & Co. in Chicago. When I took over the plants on Tuesday afternoon, Mr. Sewell Avery refused to turn over possession of the plants to the United States as directed by the President of the United States. He also refused to turn over the plants when deputy marshals were brought in. It, therefore, became necessary for me to call upon the Army to enforce the President's Executive order.

On Thursday the United States District Court issued an order restraining Mr. Avery and other executive officers of the company, from interfering with the possession of the United States. This order has been continued by the court until the questions of law raised by the bill of complaint of the United States have been determined. Accordingly, there is now no reason for the presence of troops in the plant.

EXHIBIT H

MONTGOMERY WARD & Co.,
Chicago, Ill., May 3, 1944.

MEMORANDUM TO MR. JOHN A. BARR, ASSISTANT SECRETARY, MONTGOMERY WARD & Co.

In order to carry out the provisions of the President's Executive order of April 25, 1944, it is necessary that I obtain, as promptly as possible, a list by pay roll divisions or sections, of all employees employed by Montgomery Ward & Co., in connection with the operation of the plants and facilities of Montgomery Ward & Co., located in Chicago, Ill., including the mail order house, the retail store, and the Schwinn warehouse, as of 12 o'clock noon, Wednesday, April 26, 1944.

I will appreciate it if you will inform me promptly when these records will be available. You can communicate with me through the offices of Montgomery Ward & Co., 619 West Chicago Avenue, or through the Regional Office of the Department of Commerce, United States Court House, 225 South Clark Street.

Very truly yours,

WAYNE C. TAYLOR,
Operating Manager for the United States,
Montgomery Ward & Co.

MONTGOMERY WARD & Co.,
Chicago, Ill., May 2, 1944.

MEMORANDUM TO MR. STUART S. BALL, SECRETARY, MONTGOMERY WARD & Co.

Mr. Goodloe has reported to me his telephone conversation with you of yesterday regarding my memorandum of April 29, 1944, to Mr. Harold L. Pearson. I have reread this memorandum and wish to repeat what I told you over the telephone on April 29, 1944, namely, that it is imperative that adequate steps be taken immediately so that the corporate books and records of Montgomery Ward & Co.

reflect accurately the operations of the company during the period of Government possession and operation, with respect to the plants and facilities located in Chicago, Ill., including the mail-order house, the retail store, and the Schwinn warehouse.

Mr. Nathaniel Royall, special assistant to the Secretary of Commerce, will continue to be available to discuss ways and means for establishing accurately, with the minimum disruption in the normal operations and procedures of the company, the best and most expeditious means of establishing and maintaining adequate records of the operation of the company during the period of Government possession and operation.

Mr. Royall, who is in charge of my accredited accounting representatives, can be reached at any time either at Montgomery Ward & Co., 619 West Chicago Avenue, or through the regional office of the Department of Commerce, United States Courthouse, 225 South Clark Street.

Very truly yours,

WAYNE C. TAYLOR,
Operating Manager for the United States,
Montgomery Ward & Co.

The CHAIRMAN. The committee will take a recess now until 2 o'clock.

(Whereupon, at 12:45 p. m., the committee recessed until 2 o'clock p. m., of the same day.)

AFTERNOON SESSION

(The hearing was resumed at 2:15 o'clock p. m., pursuant to the recess.)

The CHAIRMAN. The committee will come to order, please.

Mr. Taylor, I think it might be well for the record to show what your background and experience has been. Will you give us a brief résumé of your business life and where you are from, and so forth?

STATEMENT OF WAYNE CHATFIELD TAYLOR—Resumed

Mr. TAYLOR. Do you want that fairly complete, sir?

The CHAIRMAN. Just in brief.

Mr. TAYLOR. I was born in Chicago, Ill., on December 19, 1893. My first business experience was when I was employed by the Central Trust Co. of Illinois, that was in 1916.

The CHAIRMAN. Is that a general banking institution?

Mr. TAYLOR. Yes, that is a general banking institution and as you probably know General Dawes was the president of that bank. They also had a corporation known as Dawes Brothers, which was particularly interested in public utility property of one kind or another.

After a comparatively short period with the bank, I was transferred over there. I continued there until war was declared, at which time I went into the service.

After I came back to this country my first job was with a concern known as the Finance & Trading Corporation. That was a New York concern with a Chicago branch. The principal business was the investigation of either new or sick businesses and I was with them, as I recall it, for about a year. They closed their Chicago office and at that time I went into the investment banking business.

During that period of investment banking I had various other interests, including real estate, farm implements, aviation, various types of building materials, and so forth.

I helped organize quite a number of concerns in varied fields.

From about 1927 until 1931 I was in charge of the foreign activities of my firm. I spent the majority of my time on the continent of Europe

at that time with occasional visits to this country for business purposes.

In 1933 I came to Washington as executive assistant to the Administrator of the Agricultural Adjustment Act.

At the time of the organization of the Export-Import Bank and the office of special adviser to the President on foreign trade, I was transferred to those two organizations, which as you probably remember worked together.

In 1936, I believe in February, I was appointed Assistant Secretary of the Treasury and served in the Treasury until March 1939.

After leaving the Treasury I served as European representative of the American Red Cross from the fall of 1939, right after war was declared, until the fall of 1940.

I returned to this country in October, 1940, and was asked to serve as Under Secretary of Commerce. I have been serving as Under Secretary of Commerce since that time.

The CHAIRMAN. With the exception of your Government service, all of your business life has been on the management side?

Mr. TAYLOR. That is right, management, investment and various other related activities.

The CHAIRMAN. Mr. Taylor, when you arrived at the Montgomery Ward plant, if I gather correctly what happened there, you made every possible effort to get the cooperation of Mr. Avery and the other officials of that great business, did you not?

Mr. TAYLOR. That is right, sir.

The CHAIRMAN. You never at any time had any cooperation from Mr. Avery or any other official of that company, did you?

Mr. TAYLOR. We had a great many conversations of one type or another, during which I attempted to establish a basis for the Government operation. But, as you know, it is extremely important in undertaking any task of that type to establish a cut-off date and to establish the records on which Government operation, or private operation, would be based. I know of no way of starting operations without deciding when and what you are operating.

The CHAIRMAN. Did you find any official of the Montgomery Ward Co. who willingly cooperated with you?

Mr. TAYLOR. No, sir; not on any matter of importance.

The CHAIRMAN. I mean cooperation, I do not mean acquiescing to orders particularly. Was there any spirit of cooperation on the part of any official of that company?

Mr. TAYLOR. All the officials of Montgomery Ward & Co. were extremely courteous; I have absolutely no criticism of any official from that standpoint. But, when it came to my carrying out the terms of the Executive order, there was no cooperation.

The CHAIRMAN. That is what I wanted to know.

I am not asking for criticism of the officials because I presume they were acting under orders from Mr. Avery, who is their boss, and if they did not act under those orders they probably would not have a job.

Now, when it came to the question of Mr. Avery himself, he made it quite plain and he was quite emphatic that he expected and wanted to be bodily and physically carried out of the plant, did he not?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. He told you emphatically that a United States marshal and eight deputies were not a force in sufficient quantity to accomplish what he wanted, didn't he?

Mr. TAYLOR. Yes, I think I have made that quite clear in my statement. He made considerable point of the fact that he could not recognize any authority that had been presented to him.

He specifically made the point, on which I cannot comment as to the validity of the point, because I am not a lawyer, that the United States marshals could only act under the orders of the Federal court.

The CHAIRMAN. And they had no orders or papers to serve on him or anything of that sort. Therefore, he refused to recognize their authority.

Mr. TAYLOR. Yes.

The CHAIRMAN. Did the Montgomery Ward plant you took over have a guard force?

Mr. TAYLOR. Yes. I cannot tell you the exact number of employees in that plant because I never had the employment records.

That particular building contains the main retail store, as well as the executive offices.

The CHAIRMAN. Well then, of course, you do not know how many persons compose this guard or security force?

Mr. TAYLOR. No, I do not know, sir.

The CHAIRMAN. They did wear uniforms, didn't they?

Mr. TAYLOR. Yes.

The CHAIRMAN. You did see a considerable number of them around the building, didn't you?

Mr. TAYLOR. I do not think I can give you an accurate statement on that. They were carrying on their regular duties. It was made clear in the statement and in the instructions to the military detachment they were only to assist them in case there was any disorder.

The CHAIRMAN. Would you say that there were many guards in that building or more than the number of deputy marshals you had there?

Mr. TAYLOR. I would not have any basis for forming that opinion. I think it is a perfectly adequate and ordinary security system, which operates principally at night. I believe it is the custom when the operations of the plant are not going on to protect the plant.

The CHAIRMAN. That guard situation is very much like that which exists in our Federal buildings; isn't that correct?

Mr. TAYLOR. That is right.

The CHAIRMAN. There are guards in uniform at the doors?

Mr. TAYLOR. Yes.

The CHAIRMAN. So, it is entirely possible, is it not, that if you had undertaken to have the marshals carry Mr. Avery out he might have called on his guards and you might have had disorder?

Mr. TAYLOR. I was never conscious of any great danger of disorder.

The CHAIRMAN. You were conscious of the fact that Mr. Avery said that the nine marshals were not a sufficient force to get him out of the building?

Mr. TAYLOR. I think his emphasis was largely on the fact that marshals did not have the necessary authority.

The CHAIRMAN. Well, when the soldiers did carry him out, he was not hurt, was he?

Mr. TAYLOR. No, sir.

The CHAIRMAN. It was not necessary to use any physical force in the sense that he struggled against their carrying him out?

Mr. TAYLOR. That is right, sir.

The CHAIRMAN. He was perfectly content when they took hold of him. What he wanted was the physical force which he thought, I presume, would have some legal bearing on the case.

Mr. TAYLOR. That is certainly my impression, sir.

The CHAIRMAN. That was the impression you got?

Mr. TAYLOR. Yes.

The CHAIRMAN. After the injunction was issued by the judge, you still did not get any cooperation did you?

Mr. TAYLOR. As I brought out in this statement, sir, the responsible officers of the company who had been restrained from interfering with the operations, with one exception as far as we know, did not appear.

The CHAIRMAN. They just disappeared?

Mr. TAYLOR. Yes.

The CHAIRMAN. They just did not show up any more?

Mr. TAYLOR. We made constant attempts to get in touch with them, principally in connection with establishing a basis for Government operation. That went on regularly every day. The other primary thing we did was to carry out the terms of the Executive order relating to the War Labor Board directives.

The CHAIRMAN. Did you know Mr. Avery before this incident?

Mr. TAYLOR. Yes, I did, sir.

The CHAIRMAN. How long have you know him?

Mr. TAYLOR. I would say about 20 years.

The CHAIRMAN. Did you try to persuade him to give possession to the Government under this order you were trying to execute?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. You did not have any luck with him?

Mr. TAYLOR. No, sir.

Mr. DEWEY. The resolution offered by myself, which brought this inquiry into being had to do with an investigation of the seizure of Montgomery-Ward & Co. by the United States Government. Most of the inquiry that has been directed at witnesses has been on the legality of the seizure and how far the rights of the Chief Executive go in wartime to seize property and if under the so-called Smith-Connally bill the Congress has given certain rights or additional rights to the Chief Executive.

Now, in the matter of the taking over of Montgomery Ward by yourself as representing the established executive department and under such authority as had been given to you, was it your opinion that the resistance of Mr. Avery was to build up his side of the case as being a disbeliever in the authority which you held, rather than any personal resistance to the Government or to the law?

Mr. TAYLOR. My impression was that the legal aspects of the situation were predominant in Mr. Avery's mind.

Mr. DEWEY. Therefore, and it is my understanding that Mr. Avery, as chief executive of this corporation, felt that he himself had no right to surrender and if he did so without the authority of stockholders, which of course could not be obtained at once, that he himself might be in contravention of the law regarding ownership of property

and the turning over of it to unauthorized persons. He made that very clear, did he?

Mr. TAYLOR. Yes.

Mr. DEWEY. I apologize to the lawyer members of the committee, but I also am not a lawyer. However, it is my understanding it is generally required that marshals must have some authority just as a policeman must have a warrant to exercise certain rights and these marshals at that time did not possess any such court authority other than the backing of an Executive order of the President.

Mr. TAYLOR. That was my understanding of his position.

Mr. DEWEY. And then the next step, the matter of being taken out by soldiers, probably had the same bearing on the situation?

Mr. TAYLOR. Could you repeat that, please?

Mr. DEWEY. Well, the soldiers coming in was the next step in the establishment of a forceful removal of himself in protection of his position against an illegal seizure, or what he claimed to be an illegal seizure.

Mr. TAYLOR. I think my first answer probably covers that because I can only say what my general impression was. My general impression was that Mr. Avery was completely consistent, that all the steps which Mr. Avery was taking had a legal bearing, or in his mind had a legal bearing on the situation.

Mr. DEWEY. And probably that same position of resistance by subordinates of Mr. Avery was part and parcel of the same legal position?

Mr. TAYLOR. That is my impression.

Mr. ELSTON. Mr. Taylor, you have said you went to Chicago pursuant to orders that were given to you?

Mr. TAYLOR. Yes, sir.

Mr. ELSTON. You were simply fulfilling those orders while you were there?

Mr. TAYLOR. I did my best to carry them out, sir.

Mr. ELSTON. And as I understand it, you were treated courteously at all times by the officers of the company?

Mr. TAYLOR. That is right.

Mr. ELSTON. And to sum up what you said about their position, they at all times were doing what they did because they felt they were asserting a legal right?

Mr. TAYLOR. That was my impression. Their position was completely consistent from the beginning to the end insofar as I was able to ascertain. As I say, I am not a lawyer, but that certainly was the impression made on me.

Mr. ELSTON. And you, of course, do not criticize any person merely because he asserts his legal rights, do you?

Mr. TAYLOR. No, sir.

Mr. ELSTON. You feel it is perfectly just and proper that they do that and if you had some legal rights to assert you would do the same thing, wouldn't you?

Mr. TAYLOR. If that question is intended to illustrate what I would have done or if I would have done what Mr. Avery did under the particular circumstances, why I would not care to answer that.

Mr. ELSTON. I will not press you. At any rate, you do not hold it against anybody because he asserts a legal right, even though it is asserted against the Government; that is right, isn't it?

Mr. TAYLOR. That is right.

Mr. ELSTON. The chairman attempted in his questions to bring out that Mr. Avery challenged the ability of the marshals to take him out of the plant. That was not what he did at all, was it? He simply claimed they did not have the legal authority as United States marshals to act?

Mr. TAYLOR. That is correct, sir.

Mr. ELSTON. He did not say they were not sufficient in number or they did not have sufficient physical power to carry him out, did he?

Mr. TAYLOR. He indicated quite clearly that the presence of the marshals was not sufficient to enable me to carry out my instructions.

Mr. ELSTON. From a legal standpoint.

Mr. TAYLOR. It was not sufficient showing of force; let me put it that way, sir.

Mr. ELSTON. Now, when the soldiers were called in, there had not been up to that time any threats of any kind against you or any other representative of the Government?

Mr. TAYLOR. No, sir.

Mr. ELSTON. And none of you were in any fear, were you?

Mr. TAYLOR. No, sir.

Mr. ELSTON. When the soldiers came into the plant, how many of them moved into Mr. Avery's private office?

Mr. TAYLOR. A lieutenant and three men, as I recall it.

Mr. ELSTON. And the three men had fixed bayonets, didn't they?

Mr. TAYLOR. As I recall it, they did.

Mr. ELSTON. Did you see any occasion for using bayonets in Mr. Avery's office?

Mr. TAYLOR. The question of military equipment of the armed forces is an order that is always given by the commanding officer of the armed forces, sir.

Mr. ELSTON. You as a civilian and a former member of the Army did not see any occasion for using bayonets, did you?

Mr. TAYLOR. I am not familiar with the instructions as to equipment given by the commanding officer of the Sixth Service Command.

Mr. ELSTON. At any rate, the soldiers stood there with their guns and bayonets?

Mr. TAYLOR. They did.

Mr. ELSTON. Do you know the position they stood in?

Mr. TAYLOR. Sir, I believe it was at attention but I was more interested in the commanding officer and Mr. Avery than I was in what the three enlisted men were doing at that time.

Mr. ELSTON. Who finally gave the command to take Mr. Avery out of his office?

Mr. TAYLOR. I did.

Mr. ELSTON. Who asked you to give it?

Mr. TAYLOR. I asked for the advice of the Attorney General and the Attorney General advised me it was necessary to do so. I therefore gave the command to have him removed. That is all fully covered, I believe, in my statement.

Mr. ELSTON. Did he give any command to take Mr. Avery out?

Mr. TAYLOR. No; he did not.

Mr. ELSTON. I notice in the order of the Secretary of Commerce at the time possession was terminated, the statement that the interruptions of production had been restored. The company went on doing business all the time you were there, didn't it?

Mr. TAYLOR. Yes, sir.

Mr. ELSTON. Did the business increase or decrease while you were in possession?

Mr. TAYLOR. I have no way of knowing that, sir, because we were not in possession of any records on which I could base an opinion.

Mr. ELSTON. Did you see any interruptions to the business at any time?

Mr. TAYLOR. The principal interruption to the business because of which I understand the Executive order had been issued, occurred before I came to Chicago.

Mr. ELSTON. Now, while you were in possession, were any policies changed?

Mr. TAYLOR. No, sir.

Mr. ELSTON. Was the check-off system restored?

Mr. TAYLOR. We carried out to the best of our ability the terms of the Executive order, which included the instructions of the War Labor Board.

Mr. ELSTON. Did you collect any union dues?

Mr. TAYLOR. Not personally, sir.

Mr. ELSTON. I mean, did anybody under your supervision do that?

Mr. TAYLOR. We had no access to the records which would indicate whether that was done or whether it was not done.

Mr. ELSTON. So you cannot say at this time whether that took place during all the time you had charge?

Mr. TAYLOR. Not to my knowledge. I gave instructions that it should be done. Whether it was carried out or not, I do not know.

Mr. ELSTON. As a matter of fact, Mr. Taylor, you took possession and the business more or less went along in its normal way.

Mr. TAYLOR. Those were my instructions, sir, to interfere as little as possible with the ordinary operations of the business.

As you recall, a notice was posted on all the bulletin boards indicating to the employees they were to carry on with the regular duties, and so on, with the exception of the officers of the company who had been restrained, I believe they did so. As far as I know, all the operations of the company were carried on normally.

Mr. ELSTON. There was no further question after seizure of the plant, that the officers of the company and employees who remained in the place of business went along with you and cooperated and were helpful in every way?

Mr. TAYLOR. No, sir.

Mr. ELSTON. The employees were not helpful?

Mr. TAYLOR. The employees carried on their regular duties, sir.

Mr. ELSTON. What did anybody do that interfered with your conduct of the business?

Mr. TAYLOR. After the restraining order was issued, there was no interference on the part of the officers but there is a great deal of difference between interference, noninterference and cooperation. I think I made it clear that the only way in which it was possible to communicate with any of the responsible officers of the company was either by telephone or through their secretaries.

Mr. ELSTON. Did they refuse, after you had seized the place of business, at any time to give you any information that you needed in order to conduct the business?

Mr. TAYLOR. I never received any information which would have been useful in conducting the business.

Mr. ELSTON. They had quite a large force there, didn't they?

Mr. TAYLOR. Yes, sir.

Mr. ELSTON. With the exception of a few of the officers, the entire force remained on the job?

Mr. TAYLOR. As far as I know, yes.

Mr. ELSTON. And the ones who remained away were the managers of the company?

Mr. TAYLOR. That is right.

Mr. ELSTON. And at the time you went in there and from that time you became the manager of the company?

Mr. TAYLOR. That is right.

Mr. ELSTON. And so you took their place?

Mr. TAYLOR. Yes.

Mr. ELSTON. There was no occasion for them to remain around any longer?

Mr. TAYLOR. Well, I think that is a question of opinion, sir.

Mr. ELSTON. I believe that is all.

Mr. BYRNE. Mr. Taylor, you say you knew Mr. Avery about 20 years?

Mr. TAYLOR. I think that is about right.

Mr. BYRNE. Did you know him well enough to talk to him as Sewell Avery or Mr. Avery?

Mr. TAYLOR. Mr. Avery.

Mr. BYRNE. Was he friendly in his attitude toward you?

Mr. TAYLOR. Yes, he was.

Mr. BYRNE. At any time during the period between the time you went there to take possession and the time that he was carried out, were you ever with him alone? Was he always in the company of Mr. Ball and Mr. Barr or others? Was he ever alone and talked to you personally about the situation?

Mr. TAYLOR. He was never alone. I talked to him personally about the situation at considerable length.

Mr. BYRNE. But you never had any personal, individual, private talk with him?

Mr. TAYLOR. No, sir.

Mr. BYRNE. Your talks with him regarding your orders and compliance or noncompliance were entirely when he was in the company of someone else?

Mr. TAYLOR. That is right.

Mr. BYRNE. I read in the papers at the time about someone who was an employee of the company having been arrested or something along that line, for taking down some notice in the building. Can you tell us anything about that particular episode, assuming there was such an episode?

Mr. TAYLOR. That episode occurred on Thursday, May 4.

Mr. BYRNE. On Thursday, May 4?

Mr. TAYLOR. Yes, after I had left Chicago.

Mr. BYRNE. You had left there?

Mr. TAYLOR. That was after I had left.

Mr. BYRNE. You left on the 3d?

Mr. TAYLOR. Yes, I did, sir.

Mr. BYRNE. This occurred on the 4th?

Mr. TAYLOR. This occurred on the 4th.

Mr. BYRNE. At this point I do not want you to tell me something you do not know anything about other than by hearsay.

Then, you knew nothing about this particular episode personally?

Mr. TAYLOR. Not personally; I was fully informed about it.

Mr. BYRNE. You were fully informed?

Mr. TAYLOR. Yes.

Mr. BYRNE. Will you give us the information you received?

Mr. TAYLOR. In connection with the employment situation we had received information that a number of employees were being discharged. It became necessary to post a notice on the company bulletin boards. We will be very glad to introduce that notice as a part of the record.

Mr. BYRNE. We will be happy to have it.

Mr. TAYLOR. That notice indicated that during the period of Government operation no employee should be discharged without the approval of the operating manager.

Mr. BYRNE. When was that put up?

Mr. TAYLOR. That was put up on Thursday, May 4.

Mr. BYRNE. In other words, that was put up after you had left?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. It was not put up while you were there, under your personal direction?

Mr. TAYLOR. No, sir.

Mr. BYRNE. Did you leave orders it should be put up before you left?

Mr. TAYLOR. No; I did not leave orders that it should be put up.

Mr. BYRNE. Do you know who gave the order to put up that notice?

Mr. TAYLOR. Mr. Goodloe.

Mr. BYRNE. This gentleman with you?

Mr. TAYLOR. Yes.

Mr. BYRNE. All right; proceed.

Mr. TAYLOR. On the occasion of posting a former notice having to do with the carrying out of our instructions under the War Labor Board Executive order, we had received information that all those notices had been taken down.

Mr. BYRNE. How many of those notices were there, if you know, how many were distributed throughout the plant?

Mr. TAYLOR. The first notice?

Mr. BYRNE. Well, all of them, if they were in duplicate or whatever numbers they were put out in.

If you cannot testify to this, we will ask the gentleman with you. If you would rather have him tell us of his own personal knowledge rather than to have you tell us from hearsay, I will excuse you as to the answering of these questions.

Mr. TAYLOR. On that particular situation I would prefer it if Mr. Goodloe would testify. He was in charge of it.

Mr. BYRNE. Thank you very much. We will take care of that otherwise.

You say your conversations with Avery were while he was in the company of others, as to the impression you were attempting to make he should turn over the management of this plant during the existence of the order, so that you might run it according to the wishes of the

United States Government. During that particular period of your conversations with him, was his attitude one of friendly objection or was it one of antagonistic objection?

Mr. TAYLOR. I would describe it as friendly objection.

Mr. BYRNE. Based upon advise of counsel, as we sometimes say? Is that the impression you got?

Mr. TAYLOR. That was the impression I got, sir.

Mr. BYRNE. In other words, it was a rather smiling than what you would call an angry objection? I simply want to get the temperament of the man, that is all.

Mr. TAYLOR. Well, Mr. Avery's position, as it seemed to me, was that he wished to do whatever was necessary to establish and maintain his legal rights.

As far as any impression I had, he was completely objective about it.

Mr. BYRNE. You say your first order to him was delivered in the afternoon of one day—

Mr. TAYLOR. On the morning of that day.

Mr. BYRNE. In the morning?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. That was in the morning after you arrived there?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. At that time the Attorney General was with you?

Mr. TAYLOR. No, sir.

Mr. BYRNE. You were accompanied by Mr. Goodloe and others?

Mr. TAYLOR. I was accompanied by Mr. Carusi alone.

Mr. BYRNE. Yes, I remember. You stayed there practically all of that day?

Mr. TAYLOR. No; we were there on that first visit for approximately 1 hour.

Mr. BYRNE. When was it you came back in the late evening? That was the occasion when you came after hours and Mr. Avery objected to the fact that it was after 6 o'clock and therefore you would have to come back the following day as he was going home. What particular day was that?

Mr. TAYLOR. That was the same day. I think there is one part of your question that is not exactly as the circumstances took place, the events took place. We returned to the plant of Montgomery, Ward & Co. I would say about 4:30 in the afternoon, 4 o'clock or 4:30.

Mr. BYRNE. Then you stayed there until about half past 6 or 7 o'clock?

Mr. TAYLOR. Yes; it was after 7 when we left the plant.

Mr. BYRNE. And during that particular period of time how often did you ask him for compliance, about?

Mr. TAYLOR. Once very formally. This is on the occasion of the second visit and I believe that is quite clear in the statement. Informally I tried to exhaust every means at my command to see that the orders were carried out without any further undue—what you might call unusual incidents.

Mr. BYRNE. And was your last request of him shortly before he left that night?

Mr. TAYLOR. No; I made no request of Mr. Avery shortly before he left that night.

Mr. BYRNE. Were Mr. Ball and Mr. Barr still with him?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. They stayed with him pretty much all the time, did they?

Mr. TAYLOR. Yes.

Mr. BYRNE. Was this all in his own private office?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. Did he have anyone else in the office other than Mr. Barr and Mr. Ball and yourself?

Mr. TAYLOR. His secretary was in frequent attendance.

Mr. BYRNE. That is, in and out of the office?

Mr. TAYLOR. Yes.

Mr. BYRNE. The secretary occupied an outside office for work and kept coming in and talking with him?

Mr. TAYLOR. Yes.

Mr. BYRNE. Then it was the following morning that he again reiterated that he would not leave the plant unless he was forcibly removed from it and that force must be something other than deputy sheriffs or marshals because they had no right to do so unless they had a so-called court order; is that correct?

Mr. TAYLOR. His position remained exactly as it had been before, that is, the marshals, the troops and so forth, had no legal standing.

Mr. BYRNE. How many hours elapsed between the time he arrived in the morning and the time the soldiers came in under this lieutenant and stationed themselves around the room?

Mr. TAYLOR. They came in the night before.

Mr. BYRNE. They came in the night before?

Mr. TAYLOR. Yes.

Mr. BYRNE. They were there throughout the night so far as you know?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. And the following morning, with perhaps a change of soldiers, the soldiers were there and it was then, sometime around noon, did you say, that they picked him up?

Mr. TAYLOR. I would say it was about 10:30, 10:15.

Mr. BYRNE. 10:15?

Mr. TAYLOR. Yes.

Mr. BYRNE. Was that picking up done by two of them in what you call a carriage fashion?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. They did not have any guns in their hands at the time they were carrying him, did they?

Mr. TAYLOR. I do not remember that, sir. I think there is a photographic record of their equipment.

Mr. BYRNE. I think I have seen a picture of it, too. But, I did not see in the picture any guns and that is the reason I mentioned the fact.

Did you follow them down the hall or how far did they go from the office to a point where they took him outside of the premises?

Mr. TAYLOR. There is a rather long corridor and then there is an elevator. On the ground floor there is a lobby that is not quite as big as this room; a very ample lobby. The distance from the elevators to the front door I would estimate is about 40 feet.

Mr. BYRNE. His office is on the eighth floor?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. And then, did you tell me you went along with the officers in the performance of your duty?

Mr. TAYLOR. No, sir.

Mr. BYRNE. You stayed in his office?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. After he went outside of that particular private office, you remained in it and what happened after that? You do not know because you did not see it?

Mr. TAYLOR. That is right, sir.

Mr. BYRNE. Between the time that he was removed from the premises and the time that you left Chicago was how long a period?

Mr. TAYLOR. He was removed from the premises on Thursday morning.

Mr. BYRNE. At half past 10?

Mr. TAYLOR. Half past 10, I would say, and I left Chicago the following Wednesday afternoon, at 3:30, a week later.

Mr. BYRNE. Between the time he was removed and the time you left Chicago, he did not come back again into the premises personally?

Mr. TAYLOR. Not as far as I know, sir.

Mr. BYRNE. Between the time he left and the time you left there, you say you got absolutely no cooperation from any employee of that particular concern as to turning over books to you, giving you a knowledge of the conduct of the business or the manner in which you should make a check on the affairs of that firm? Answer that yes or no.

Mr. TAYLOR. That is correct, but I would like to make that quite clear, that is, I did not attempt to talk to individual employees who were engaged in their ordinary duties.

Mr. BYRNE. Now, at this point let me interrupt you. Under the orders of the United States Government, you were in charge of that plant?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. You did not say a thing to any person there that they should turn over the books of the concern to you between the time that Avery was removed and the time you left Chicago?

Mr. TAYLOR. Yes, I made a series of moves in that direction.

Mr. BYRNE. Tell us about those series of moves and who it was you directed them at.

Mr. TAYLOR. A certain amount of that is in the statement.

Mr. BYRNE. I appreciate that.

Mr. TAYLOR. Would you like me to repeat it?

Mr. BYRNE. I am not taking exception to your statement, it is fine. All I want is reiteration.

Mr. TAYLOR. The first attempt that was made was with Mr. Ryan, the president of the company.

Mr. BYRNE. Pardon me at this point. Did you ever meet Mr. Ryan?

Mr. TAYLOR. Yes, I had met Mr. Ryan.

Mr. BYRNE. During the time that you were in charge?

Mr. TAYLOR. I met him the night before.

Mr. BYRNE. You met him the night before you took charge?

Mr. TAYLOR. I was in possession in so far as the United States Government was concerned but as I think I made clear, that possession was not recognized and I met Mr. Ryan that evening.

Mr. BYRNE. Did you meet him at a hotel or some other place?

Mr. TAYLOR. In the office.

Mr. BYRNE. In Mr. Avery's office?

Mr. TAYLOR. Yes.

Mr. BYRNE. Do you know Mr. Ryan personally?

Mr. TAYLOR. I think I had met Mr. Ryan before.

Mr. BYRNE. Years ago?

Mr. TAYLOR. Yes, very casually.

Mr. BYRNE. In other words, you did not know him as well as you knew Avery.

Mr. TAYLOR. No, sir.

Mr. BYRNE. Now, from that point tell us what you did in attempting to persuade Pearson and these other men in charge of the books and other details of that business, to comply with the order of the United States Government, the President of the United States.

Mr. TAYLOR. On the morning of Thursday, the 27th, we sent for Mr. Pearson in order to have a discussion with him as to steps that might be taken to establish the basis for operations, and so forth.

Mr. BYRNE. Did he comply with your request to come in?

Mr. TAYLOR. As soon as he reached the building he came into Mr. Avery's office where we were.

Mr. BYRNE. There he talked with you and whoever else was there?

Mr. TAYLOR. The Attorney General and the people I have mentioned in the statement.

I made perfectly plain to Mr. Pearson that I was not going to ask him to do anything that would interfere with what he considered to be his legal position. But I endeavored to ascertain the type of records, the possibility of segregating certain units from others, and so on. It was all perfectly, I would say, friendly and in the nature of a business conversation.

Mr. BYRNE. In other words, what you were doing is what we might say in a gentlemanly sense being kind to him.

Do you know Pearson personally?

Mr. TAYLOR. There again I have not been in Chicago very frequently in recent years but was reasonably sure of having met Mr. Pearson before. However, it was not what you would call an intimate acquaintance.

Mr. BYRNE. You did not know him socially or anything of that kind?

Mr. TAYLOR. No, sir.

Mr. BYRNE. Tell us how often you approached him and others there and tried to get them to comply and according to your testimony secured no compliance whatsoever.

Mr. TAYLOR. The attempts before Mr. Avery appeared, I think are very amply covered. That was from 8 o'clock in the morning until 10 o'clock, until Mr. Avery came in. All our efforts were to establish a basis for cooperation with other officers of the company. Those attempts were unsuccessful. After Mr. Avery left we immediately resumed those attempts, starting with Mr. Ryan.

Mr. BYRNE. I think you said in the statement Mr. Ryan never showed up.

Mr. TAYLOR. Well, Mr. Ryan indicated that he was in conference and was too busy running Montgomery, Ward & Co. to be able to talk to me.

Mr. BYRNE. Was he in that conference for a week?

Mr. TAYLOR. It was during, I would say, most of that day.

Mr. BYRNE. What about the other days, did he ever come to the plant?

Mr. TAYLOR. After the restraining order was issued, as far I know, he never came back to the plant.

Mr. BYRNE. In other words, you never saw him except the night you speak of when you first went there and he was in the office?

Mr. TAYLOR. That is right.

Mr. BYRNE. From that time until you left Chicago, Ryan never showed up?

Mr. TAYLOR. He attended the stockholders' meeting.

Mr. BYRNE. You were not at the stockholders' meeting?

Mr. TAYLOR. No, sir.

Mr. BYRNE. Was the stockholders' meeting held in the office of the plant where you were?

Mr. TAYLOR. No, it was formally held in the plant and then adjourned to the ball room of the Blackstone Hotel.

Mr. BYRNE. You did not go to the Blackstone?

Mr. TAYLOR. No, sir.

Mr. BYRNE. Ryan nevertheless never came to the plant while you were there?

Mr. TAYLOR. Except on that one occasion.

Mr. BYRNE. That was on that particular night?

Mr. TAYLOR. On the occasion of coming to the stockholders' meeting.

Mr. BYRNE. That was the occasion of the stockholders' meeting and they adjourned to the Blackstone.

During the time that you were there, did you have an accountant come with you from Washington?

Mr. TAYLOR. Yes.

Mr. BYRNE. Did you go around with the accountants and speak to the accountants of the firm and ask them to show your accountants their way around?

Mr. TAYLOR. No, we felt that was not feasible. We felt it was essential to talk to the people who were responsible. As you probably know, records for an organization of that size are in constant use and scattered all over the building so that the information that you would get from talking to any given individual of the accounting staff who was working on a particular piece of paper would give you no indication at all as to what was going on.

Mr. BYRNE. I appreciate that.

How many of these accountants did you have from Washington that were there to take over and help you out in getting a comprehensive knowledge of what it was all about? How many did you bring with you?

Mr. TAYLOR. We had a man in charge who was the head man.

Mr. BYRNE. Was he from the Commerce Department?

Mr. TAYLOR. He was acting as Assistant to the Secretary of Commerce.

Mr. BYRNE. What is his name?

Mr. TAYLOR. Nathaniel Royall.

Mr. BYRNE. His name is mentioned in your testimony?

Mr. TAYLOR. Yes, sir.

Mr. BYRNE. How many men did he have with him?

Mr. TAYLOR. He had one chief assistant by the name of Mr. Nelson and he made arrangements to have immediately available an adequate staff of accountants to carry out his instructions.

Mr. BYRNE. In other words, if he had an opportunity to operate, he would have been able to bring in an operating crew immediately?

Mr. TAYLOR. Immediately.

Mr. BYRNE. He never got a chance to do that, he never did have a chance to operate?

Mr. TAYLOR. No, sir.

Mr. BYRNE. What other mechanical forces did you have with you?

Mr. TAYLOR. Mr. Goodloe.

Mr. BYRNE. What was his particular purpose there?

Mr. TAYLOR. Mr. Goodloe's instructions were to assist me in every way possible in carrying out the terms of the Executive order.

Mr. BYRNE. What are his abilities? What is his particular forte in life?

Mr. TAYLOR. Mr. Goodloe is an attorney of considerable experience. I believe I would prefer to have Mr. Goodloe give you any details as to that.

Mr. BYRNE. You know he is a man of ability?

Mr. TAYLOR. I do indeed.

Mr. BYRNE. Did he have assistants with him?

Mr. TAYLOR. No, sir.

Mr. BYRNE. In other words, he was there with you as he is today, simply for the purposes of counsel and advice?

Mr. TAYLOR. And in connection with the carrying out of parts of the Executive order dealing with the War Labor Board directives. I appointed Mr. Goodloe as grievance officer and Mr. Goodloe acted as grievance officer.

Mr. BYRNE. As far as you know, did Mr. Goodloe get anywhere with these people he talked with or was he in the same state of separation that you were in?

Mr. TAYLOR. Mr. Goodloe was able to engage in two or three informal conversations at which I was not present. But, my impression is that with the exception of those which dealt with the employment situation and his duties as grievance officer, the character of the discussions was similar to the conversations which I have described.

Mr. BYRNE. But in the end they amounted to nothing in the way of progress as to the matter of taking over the operation of the plant?

Mr. TAYLOR. That is right.

Mr. BYRNE. During all of that time you were there, this week, you were at that plant day in and day out and at the present moment you know no more about the management of that plant than you knew before you went into it, is that right?

Mr. TAYLOR. No, I think I know considerably more about it than when I went in at first.

Mr. BYRNE. Tell us what you know more about the plant than you knew before, as to the management.

Mr. TAYLOR. Well, I have certain impressions that anybody will get even when visiting a country where you do not speak the language.

Mr. BYRNE. Well, that is all right, too, Mr. Taylor. But I do not view this as a humorous situation at all.

Mr. TAYLOR. No; I do not either.

From the standpoint of actual knowledge of the details of the operation, availability of records, ability to talk about the problems of that plant with the officers in charge of that plant, I have learned nothing.

Mr. BYRNE. You went there for a serious purpose and came away absolutely abortive, isn't that so?

Mr. TAYLOR. That is a question of opinion, sir.

Mr. BYRNE. Well, do you subscribe to my opinion you came away abortive, you knew nothing more about that plant when you left it than when you entered it? I mean by that insofar as any assistance from the plant management?

Mr. TAYLOR. That is right.

Mr. BYRNE. That is all I want to say.

Mr. MONRONEY. I believe this subject may be broken into two general questions, the one which the committee has discussed as to the right of the President to seize and, I believe the country is not only interested in that phase of the problem, but also in the method of seizure by armed force.

Throughout your testimony here you have detailed that Mr. Avery refused to recognize the order of the President.

Mr. TAYLOR. That is right.

Mr. MONRONEY. He refused to recognize the presence of the United States marshals as being the token force necessary for seizure?

Mr. TAYLOR. Yes.

Mr. MONRONEY. He then refused to recognize the presence of soldiers at the plant as accomplishing the seizure of the plant?

Mr. TAYLOR. Yes.

Mr. MONRONEY. In your statement you indicate that Mr. Avery had given every indication he wished to be removed from the building by force. Will you elaborate on that a little bit?

Mr. TAYLOR. That I think goes back to the original conversation that I had on the morning of my arrival. Mr. Avery made his position extremely clear and that is, he did not recognize any of the instructions or authorities which I had presented to him.

I endeavored to ascertain what would satisfy Mr. Avery in order to keep his legal position, as he had described it, and in that first conversation and in all subsequent conversations it was made perfectly clear that Mr. Avery did not feel that he had the right to leave and that it would be necessary to remove him from the building.

There were any number of individual questions and answers, all of which emphasized that particular point. It was completely consistent with his position throughout.

Mr. MONRONEY. Did that appear to be a decision arrived at on the spur of the moment?

Mr. TAYLOR. It did not appear that way to me.

Mr. MONRONEY. It appeared to you to have been on the advice of counsel and considerable thought had been given to the requirement that some forcible arm of the Government eject him from the premises; is that right?

Mr. TAYLOR. Yes, sir.

Mr. MONRONEY. Was there any other arm of the Government that could have been used, other than that which was brought into play?

Mr. TAYLOR. As I think I made clear before, all the legal aspects of this situation were obviously of the greatest importance and I acted entirely on the basis of advice and consultation with the chief legal

officers of this Government and I do not think my opinion on that particular point would be valid, because I do not know.

Mr. MONRONEY. But repeatedly it was demanded more force would be necessary to recognize the seizure of the plant?

Mr. TAYLOR. That force would be necessary but the question of amount was never specifically indicated. In fact, I endeavored to find out what would be the appropriate amount without success.

Mr. MONRONEY. The morning that Mr. Avery was removed from the building, was there any effort made to prevent his entrance into the plant?

Mr. TAYLOR. No, sir.

Mr. MONRONEY. No instructions were given to the guards or to anyone else?

Mr. TAYLOR. No, sir. The instructions which I had given the previous evening were still in effect, in other words, that Mr. Avery was free to come and go.

Mr. MONRONEY. Perhaps the technical and legal evidence of seizure in prohibiting him from entering the plant would not have been recognized by Mr. Avery and his attorney as tantamount to his removal from the premises; is that right?

Mr. TAYLOR. I do not know, sir. That was not discussed.

The CHAIRMAN. Mr. Taylor, to sum this situation up, as I understand it you arrived in Chicago on the 26th of April. You went immediately to the plant and conferred with Mr. Avery and while he was courteous to you he never at any time recognized you were there with any legal authority or that you had any legal possession of the plant.

Mr. TAYLOR. That is right, sir.

The CHAIRMAN. He never changed that attitude at all?

Mr. TAYLOR. That is correct, sir.

The CHAIRMAN. In the first instance, some of the officials were willing to cooperate but later, after a telephone communication, they declined to cooperate; is that right?

Mr. TAYLOR. I think the type of cooperation I was asking for was more from the standpoint of general information so as to enable the company and myself to come to some workable agreement rather than a direct demand for cooperation in carrying out my orders.

The CHAIRMAN. Mr. Pearson was discussing those matters with you when he was called out to the telephone and when he came back he refused to discuss the matter any further; is that right?

Mr. TAYLOR. That is right.

The CHAIRMAN. The court restraining order was issued on the night of the 27th, I believe, wasn't it? That was the day after you first arrived?

Mr. TAYLOR. Yes, the day after I first arrived.

The CHAIRMAN. And after the court order had been signed, referring to the supervisors and officials of the company, would it be fair to describe their attitude as a sit-down strike?

Mr. TAYLOR. They did not appear.

The CHAIRMAN. The officers did not appear?

Mr. TAYLOR. No, sir.

The CHAIRMAN. But the supervisory employees who remained in the plant and worked did not cooperate, did they?

Mr. TAYLOR. Their instructions were to carry on their regular duties. As far as I was able to determine, they were carrying on their regular duties.

The CHAIRMAN. But they were not giving you any information? Mr. TAYLOR. No, sir. As a matter of fact, I did not attempt to get any information of any significance from them.

The CHAIRMAN. Isn't it true of this situation, Mr. Taylor, that you went there and courteously tried to carry out your duties under the Executive order?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. You met with courtesy but refusal?

Mr. TAYLOR. Yes.

The CHAIRMAN. And as a matter of fact, you never did operate that plant?

Mr. TAYLOR. In terms of what I would consider operations, and this has no bearing on the purely legal aspects of it, the answer is no, I did not.

The CHAIRMAN. On instructions from Mr. Avery, perhaps instructions given under advice of counsel, the principal officers or responsible officers of that concern refused to either recognize the authority of the President and his order, which you were trying to execute and declined to cooperate even after the court had issued an order restraining them from interference; is that right?

Mr. TAYLOR. Yes, sir.

The court order restrained them from interfering with me on the premises. I assume they interpreted their absence was carrying out that order.

The CHAIRMAN. Having legally established his right, if that was the purpose of Mr. Avery's attitude, the court order having been issued, the officers of that company could have cooperated with you without in any way interfering with the legal situation, could they not?

Mr. TAYLOR. I would think so.

The CHAIRMAN. That is all.

Mr. Goodloe, we would like to ask you a few questions. Will you give us your name?

STATEMENT OF JOHN D. GOODLOE, SPECIAL ASSISTANT TO THE SECRETARY OF COMMERCE

Mr. GOODLOE. My name is John D. Goodloe, special assistant to the Secretary of Commerce.

Mr. BYRNE. Where do you live?

Mr. GOODLOE. Washington.

Mr. BYRNE. How long have you been in Washington?

Mr. GOODLOE. About 13 years.

Mr. BYRNE. What has been your occupation while in Washington?

Mr. GOODLOE. I have been a lawyer in Government service since about August, 1931.

Mr. BYRNE. Since 1931?

Mr. GOODLOE. Yes, sir.

Mr. BYRNE. In what division or divisions?

Mr. GOODLOE. Originally with the Federal Farm Board as law clerk to Justice Reed, who was then general counsel. Since that time I have been with the R. F. C., Commodity Credit, Farm Credit, and Department of Agriculture; and for the last 4 years with the R. F. C.

Mr. BYRNE. Where did you come from originally?

Mr. GOODLOE. Kentucky.

Mr. BYRNE. What part of Kentucky?

Mr. GOODLOE. Richmond, near Lexington.

Mr. BYRNE. What is your background as to education?

Mr. GOODLOE. I did 4 or 5 years newspaper work in Kentucky and I went to the University of Kentucky. I had my legal education at Harvard Law School.

Mr. BYRNE. You were with Mr. Taylor in the Montgomery Ward plant during the period that he has testified to?

Mr. GOODLOE. Most of the time. I was not present at the initial meeting between Mr. Avery and Mr. Taylor and Mr. Carusi. But on the afternoon they returned with the marshals I was present and was present most of the time thereafter.

Mr. BYRNE. Will you tell us fully what occurred regarding that particular statement made in the newspapers with reference to some notice taken from the wall by some official of the Montgomery-Ward Co.? For that particular act he had been either charged with or arrested or something was done to him.

If you will tell us the whole story, I will be very thankful.

Mr. GOODLOE. Before Mr. Taylor had left he had posted a notice in the plant with reference to the steps that were to be taken to carry out the War Labor Board directive orders of January 15 and April 5, 1944.

Mr. BYRNE. You do not mean personally?

Mr. GOODLOE. No, sir; he had them posted.

Mr. BYRNE. He had ordered the posting?

Mr. GOODLOE. Yes, sir.

Mr. BYRNE. Can you tell us how those notices were posted, who posted them and where they were posted in the building?

Mr. GOODLOE. They were posted on the bulletin boards. There was more than one bulletin board on each floor of the building and they were posted there.

Mr. BYRNE. Did you see them on the boards?

Mr. GOODLOE. Yes.

Mr. BYRNE. Did you prepare the notices?

Mr. GOODLOE. The notice I am speaking of now was the one that was first put up on Mr. Taylor's order. A great many of those, if not all of them, were subsequently torn down and removed from the bulletin boards after the troops were withdrawn the Saturday of the first week.

Mr. BYRNE. Do you know who tore them down?

Mr. GOODLOE. No, sir.

Mr. BYRNE. That was not done by you or any of your subordinates?

Mr. GOODLOE. Oh, no.

Mr. BYRNE. That was not done by Mr. Taylor?

Mr. GOODLOE. No.

Mr. BYRNE. It was not done by anyone in the United States service?

Mr. GOODLOE. No, sir.

Mr. BYRNE. What did the notice state, generally? Have you a copy of it?

Mr. GOODLOE. We have a copy of that.

Mr. BYRNE. It is part of an exhibit?

Mr. GOODLOE. It is included as an exhibit in Mr. Taylor's statement.

Mr. BYRNE. What exhibit?

Mr. GOODLOE. Exhibit D.

Mr. BYRNE. That is the exhibit entitled "Montgomery Ward & Co.—Statement of Under Secretary Wayne C. Taylor," and so forth?

Mr. TAYLOR. That is the one.

Mr. BYRNE. Signed by you and dated April 28, 1944?

Mr. TAYLOR. Yes.

Mr. GOODLOE. That is not the one posted resulting in the incident of which you speak.

Mr. BYRNE. That was one which had been torn down also, but it is not the one the papers had reference to?

Mr. GOODLOE. That is right.

Mr. BYRNE. Have you got the one the papers did refer to?

Mr. GOODLOE. I am going to give you that in just a moment.

Notwithstanding the fact that the Government was in possession of the plant and the facilities, and notwithstanding the fact that the court had issued the restraining order, the officials of Montgomery Ward continued to discharge employees without our knowledge or approval.

Mr. BYRNE. Do you know that personally? You say they continued to discharge employees. Are you personally aware of that fact by direct knowledge?

Mr. GOODLOE. Yes, sir.

Mr. BYRNE. Well, tell us what direct knowledge you have of that particular fact?

Mr. GOODLOE. I put up this notice which said that in the future no dismissals were to be made.

Mr. BYRNE. Read the whole notice if you will, for the record.

Mr. GOODLOE (reading):

NOTICE

TO ALL OFFICIALS OF MONTGOMERY WARD & CO. AND TO THE MANAGERS AND OTHER PERSONS IN CHARGE OF EACH PLANT OR FACILITY OF MONTGOMERY WARD & CO. LOCATED IN CHICAGO

As of April 26, 1944, the Secretary of Commerce, pursuant to an Executive Order of the President dated April 25, 1944, took possession of and since that time has been operating for and on behalf of the United States of America, the plants and facilities of Montgomery Ward & Co. located in Chicago, including the Mail Order House, the Retail Store and the Schwinn Warehouse.

Notwithstanding the foregoing, and the further fact that Montgomery Ward & Co. and its officers and executives are enjoined from obstructing, disturbing, and interfering with the possession, control, and operation of such plants and facilities by the United States of America by a temporary restraining order issued on April 27, 1944, by the Honorable William H. Holly, Judge of the United States District Court for the Northern District of Illinois, numerous employees engaged in the operation of such plants and facilities since the aforementioned date have been and are being discharged by the officials of Montgomery Ward & Co. without the knowledge, consent, or approval of the Operating Manager for the United States or anyone designated by him to approve of such action.

Therefore, notice is hereby given:

1. That the dismissals of all employees dismissed or discharged from service in the aforementioned plants and facilities of Montgomery Ward & Co. on and after April 26, 1944, shall not be effective unless or until the reasons for said dismissals have been submitted to, and approved by, the operating manager for the United States or his duly authorized representative.

2. That no further dismissals are to be made of employees in the aforementioned plants or facilities of Montgomery Ward & Co. unless the reasons therefor are

first submitted to and approved by the operating manager for the United States or his duly authorized representative.

JOHN D. GOODLOE,

Duly authorized representative of the Operating Manager of the United States of Montgomery Ward & Co.

This notice is the property of the United States of America.

Mr. BYRNE. How is that signed?

Mr. GOODLOE. Signed John D. Goodloe, Duly Authorized Representative of the Operating Manager of the United States of Montgomery Ward & Company.

Mr. BYRNE. That is dated when?

Mr. GOODLOE. It is not dated but it was put up on the morning of May 4.

Mr. BYRNE. It was put up on the fourth of May, although it is not dated?

Mr. GOODLOE. That is right, sir.

Mr. BYRNE. Proceed from that point on. You were about to tell us about your personal knowledge of discharges by the company of employees in contravention of that order and the rights of the Government at that time on those premises.

Mr. GOODLOE. A few minutes after this notice was posted one of the company officials—

Mr. BYRNE (interposing). Who, if you know?

Mr. GOODLOE. Mr. P. R. Sowell, assistant to the operating vice-president, I believe, it was, removed one of the notices.

Mr. BYRNE. How do you know he removed it?

Mr. GOODLOE. I heard a report to that effect almost immediately and of course the newspapers carried accounts of the incident and Mr. Sowell's arrest.

Mr. BYRNE. Arrested by whom?

Mr. GOODLOE. I believe by an F. B. I. agent.

Mr. BYRNE. By an F. B. I. agent?

Mr. GOODLOE. Yes.

Mr. BYRNE. Under your orders?

Mr. GOODLOE. No, sir.

Mr. BYRNE. Had you given orders to the F. B. I. agents to arrest anyone who did anything in contravention of the laws of the United States?

Mr. GOODLOE. I had not personally.

Mr. BYRNE. Do you know those orders were given?

Mr. GOODLOE. Yes, sir.

Mr. BYRNE. Who gave those orders?

Mr. GOODLOE. Well, I put this notice up and I told the Secretary of Commerce and the Attorney General on the telephone that I was going to put it up in order to stop these unauthorized dismissals. They agreed that was the proper thing to do. I then said that I expected that we would have trouble as to the tearing down of these notices just as we had on the previous notice.

Mr. BYRNE. Who did you tell that to?

Mr. GOODLOE. The Secretary of Commerce and the Attorney General.

Mr. BYRNE. The Attorney General was present there in Chicago?

Mr. GOODLOE. He was back in Washington; this was by telephone.

Mr. BYRNE. A telephone conversation?

Mr. GOODLOE. Yes. He indicated that steps would be taken to prevent that.

Mr. BYRNE. And then it was that this man Sowell tore down one of these notices and he was seen by an F. B. I. agent and arrested; is that right?

Mr. GOODLOE. That is right, sir.

Mr. BYRNE. Was he arrested with the particular paper in his hand?

Mr. GOODLOE. That is my understanding, but I was not present on the first floor where it happened.

Mr. BYRNE. What is that F. B. I. agent's name?

Mr. GOODLOE. That I do not recall, sir.

Mr. BYRNE. We will have to find that out.

Mr. GOODLOE. Shortly after this notice was published I received several lists of employees who had been discharged by the company subsequent to noon, April 26, when the Government took possession.

Mr. BYRNE. You had received a number of lists of employees who had been discharged improperly?

Mr. GOODLOE. That had been discharged without authority from Mr. Taylor.

Mr. BYRNE. Exactly, without authority from Mr. Taylor. Now, have you got those lists with you?

Mr. GOODLOE. No.

Mr. BYRNE. Can you secure them?

Mr. GOODLOE. I could get them.

Mr. BYRNE. Will you please bring them here and put them in as part of this testimony?

Mr. GOODLOE. I will be glad to furnish them if the committee desires them to be put in the record.

Mr. BYRNE. If the chairman says so, we will be happy to have them. We would like to have it as a part of the record. It is part of the res gestae.

The CHAIRMAN. Yes, you can put them in.

Mr. BYRNE. It is all part of the res gestae.

Now, proceed from that point. Go right along.

Mr. GOODLOE. I will have to get that particular information for you.

Mr. BYRNE. That can be done later on. We will be here for quite a while, a couple of weeks from now anyway.

Mr. GOODLOE. Well, I think that answers the question you had asked about this notice.

Mr. BYRNE. I will ask you now another question.

After this arrest by the F. B. I. agent of this man, what was done, if anything, with that particular man who was arrested?

Mr. GOODLOE. I do not know of my own personal knowledge but I understood he was arraigned and subsequently the case was dismissed. That was a matter not under my direction.

Mr. BYRNE. You did not appear?

Mr. GOODLOE. No, sir.

Mr. BYRNE. You did not appear in the matter?

Mr. GOODLOE. No, sir.

Mr. BYRNE. And the arrest, in your opinion, Mr. Goodloe, was a justifiable arrest under the orders of the United States Government? I am asking you now for an opinion as an attorney.

Mr. GOODLOE. I would think so; yes, sir. The notice clearly stated at the bottom that "This notice is the property of the United States of America."

The CHAIRMAN. Is there anything else?

Mr. DEWEY. Mr. Goodloe, on the original notice, the one marked exhibit D which you said had been torn down, did you hear of any of them having been defaced while still up? By defaced, I mean did anyone draw on them or were any remarks put on them?

Mr. TAYLOR. On the notice signed by Secretary Jones, which was the original notice indicating Government possession and operation, giving instructions to the employees, and so on, I received several reports that those notices had been defaced.

Mr. DEWEY. Did you see what type of marking or defacement was put on them, or did you ascertain what type of defacement was put on them?

Mr. TAYLOR. Principally swastikas.

Mr. DEWEY. The swastika in our general terminology and knowledge would mean a sort of dictatorial or Hitlerian symbol.

Mr. TAYLOR. I believe it has been officially adopted as meaning that.

Mr. DEWEY. To go to the matter of the arrest of Mr. Sowell, he was in charge, was he not, of the checking of the employment cards? He had something along those lines to do; that was his function?

Mr. GOODLOE. I do not know what his official duties were, sir.

Mr. DEWEY. It is my understanding that he was a sort of assistant employment manager. In taking this document from the wall as assistant employment manager, he probably should have gone to some authority to take it down, but he was taking it down to show to the employment manager and in an endeavor to ascertain how to handle the cards of those people who had already been separated from the company. He wanted to ascertain what the effect of the order would be on those that had been separated during the period of the order.

I would like to ask if it is known by you and if it is not, I will not press this, but after having been apprehended in the Montgomery Ward plant, he was turned over to the district attorney for the northern district of Illinois, was he not?

Mr. GOODLOE. That is my understanding. I only know that from newspaper accounts.

Mr. DEWEY. You only know what happened after that from newspaper accounts?

Mr. GOODLOE. That is right.

Mr. DEWEY. And you probably read in the newspapers that he was handcuffed, fingerprinted, placed in a cell and that photographs were taken of him behind the bars by the public press. That, I think is all public knowledge. You say you only have second-hand knowledge as to that.

Mr. GOODLOE. I have no knowledge about it. I did read the newspaper accounts, of course.

Mr. DEWEY. You did not meet the man yourself, you knew nothing of his character?

Mr. GOODLOE. After this incident I did see him and talk with him about quite a few things. But, prior to that time I had never met him.

Mr. DEWEY. He was, as you met him afterward, in no way the type of man that would go out of his way to destroy government property or a person—

Mr. BYRNE (interposing). I submit that is not a fair question. It calls for a conclusion and is not a fair legal question.

Mr. DEWEY. Unfortunately, I am not a lawyer.

The CHAIRMAN. I think the man's actions speak for him.

If Mr. Dewey wants to put that in the record, it is perfectly all right.

Mr. DEWEY. I will be glad to strike it from the record from that point.

I will ask Mr. Goodloe if in his conversations with this gentleman afterward, did he show cooperation in a genuine way or was he very obdurate?

Mr. GOODLOE. No; after this experience he was, I would say, rather cooperative.

Mr. DEWEY. Even in consideration of the fact he had been arrested? I think that is all.

The CHAIRMAN. Mr. Goodloe, there is one other thing that has just occurred to me.

I believe you turned the plant back to Montgomery Ward on the order of the Secretary of Commerce?

Mr. GOODLOE. Yes, sir.

The CHAIRMAN. Will you tell us how it was done and when?

Mr. GOODLOE. On May 9 I received the signed order from the Secretary of Commerce and a letter of transmittal to Mr. Avery, with instructions to see that was delivered to him at exactly 7 p. m., Chicago time.

The CHAIRMAN. On May 9?

Mr. GOODLOE. May 9.

The CHAIRMAN. And did you deliver it to him?

Mr. GOODLOE. When I called at his apartment at 6:55 he had just left. I left the original with the doorman. He said there was someone in his apartment who would take it. I left instructions that the contents were to be communicated to Mr. Avery immediately and that I could be reached at the plant.

I went to the plant and was there 5 minutes after 7. I gave the duplicate to his administrative assistant in his office and by that time Mr. Avery had been reached on the telephone and the contents were read to him.

The CHAIRMAN. Did he communicate with you?

Mr. GOODLOE. Yes, I talked with Mr. Avery on the telephone.

Mr. BYRNE. Mr. Goodloe, may I ask you if you were present during the election?

Mr. GOODLOE. Yes; I was in the administration building on May 9, the day the election was held.

Mr. BYRNE. Did you in any official capacity represent the Government in that election?

Mr. GOODLOE. No. When I say I was present at the election, I mean I was at the plant.

Mr. BYRNE. Were you present in the plant during the election?

Mr. GOODLOE. Yes.

Mr. BYRNE. Were you there officially on the part of the Government as an observer or in any capacity in behalf of the Government?

Mr. GOODLOE. Not in connection with the election. That was held under the jurisdiction of the National Labor Relations Board. I was there merely as Mr. Taylor's representative in his absence.

Mr. BYRNE. I want to ask you this question: After those notices had been taken down by this man or others, were they again placed on the boards? Were they put back by you or someone under your orders?

Mr. GOODLOE. Yes.

Mr. BYRNE. Did they remain there until you left?

Mr. GOODLOE. I could not say all of them did remain but substantially all of them did. As a matter of fact, when I returned to the plant at 7 o'clock on May 9, after this order had been delivered relinquishing possession, I took with me six or eight deputy marshals who were immediately dispersed through the plants to remove all Government posters. They received full cooperation of the company people in removing all of those notices that had been put up.

Mr. BYRNE. They did that throughout the property?

Mr. GOODLOE. Yes, sir.

Mr. BYRNE. And those notices were, of course, important notices?

Mr. GOODLOE. That is right, sir.

Mr. ELSTON. Just a moment; since we are going to object and confine this hearing to rules of evidence as they are followed in the courtroom, I object to that question.

The CHAIRMAN. Since I overruled the other objection, I will overrule this one.

Mr. BYRNE. The question was those were important notices, and your answer is what?

Mr. GOODLOE. Yes, they were important notices. But they were no longer important because the Government had turned back the property and the instructions were given to remove those notices.

Mr. BYRNE. Mr. Chairman, may I ask this witness to furnish the committee with copies of those documents he says he has in his possession pertaining to this matter? I think that could be done rather than introduce them by way of testimony and thus we will have them in the record.

The CHAIRMAN. They will be made part of the record.

(The documents above referred to are as follows:)

DEPARTMENT OF COMMERCE,
OFFICE OF THE SECRETARY,
Washington, May 26, 1944.

HONORABLE ROBERT RAMSPECK,
CHAIRMAN, SELECT COMMITTEE TO
INVESTIGATE MONTGOMERY WARD SEIZURE,
House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: At the conclusion of Mr. Taylor's testimony yesterday, I was asked a few questions concerning the notice which was posted on the morning of May 4, 1944, regarding the unauthorized dismissal by Montgomery Ward & Co. of employees in its Chicago plants and facilities during the period of Government operation; and was requested to supply for the record, detailed lists of such discharged employees.

Such lists are enclosed and consist of an exchange of memoranda between Mr. L. L. Footh, Chicago House Manager, and the writer, dated May 4th and May 5th, respectively; Mr. P. D. Sowell, section 5-A, and the writer, dated May 5th and May 6th, respectively; Mr. V. R. Edstrom, Fashion House Manager, and the writer, dated May 4th and May 6th, respectively; Mr. M. E. Garrison, Assistant Retail Store Manager, and the writer, dated May 4th and May 6th, respectively; and between Mr. P. D. Sowell, section 5-A, and the writer, dated May 8th.

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With further regard to the notice posted on May 4th concerning the unauthorized discharge by the company of employees during the period of Government operation, I am enclosing, for insertion in the record, copy of the letter addressed to Mr. Taylor on May 4, 1944, by Mr. Stuart S. Ball, Secretary of Montgomery Ward & Co., together with copy of the reply, dated May 6th, I made to Mr. Ball in Mr. Taylor's absence.

With reference to the steps that were taken to carry out the War Labor Board's directive orders of January 15, 1944, and April 5, 1944, I am enclosing, for insertion in the record, copy of a letter I addressed to Mr. John A. Barr, Assistant Secretary and Labor Relations Officer of Montgomery Ward & Co., dated May 5, 1944, as well as a copy of a letter I, on that date, addressed to Mr. Leonard Levy, executive vice president of the union.

Sincerely yours,

JOHN D. GOODLOE.

CHICAGO, ILL., May 6, 1944.

Mr. L. L. FOOTH,

Chicago House Manager, Section 7-1.

In view of the information submitted in your memo of May 4, 1944, and the subsequent discussion with Messrs. P. D. Sowell and C. M. Odorizzi, I have approved on behalf of Mr. Wayne C. Taylor, Operating Manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., Inc., the following dismissals of employees in such plants and facilities made subsequent to 11:45 a. m. on Wednesday, April 26, 1944.

| Name | Department | Job | Effective date |
|----------------------------|----------------------------|----------------------------|----------------|
| Wiener, Manuel..... | 35-42..... | Stock helper..... | May 1, 1944 |
| Boswell, Ralph..... | 48-75-76-83-84-87..... | Stockman..... | May 4, 1944 |
| Bergeson, Olga..... | Cashiers..... | Cashier..... | Apr. 28, 1944 |
| Imburgia, Rosemary..... | 31-36..... | Order filler..... | Apr. 28, 1944 |
| Schramm, Helen..... | Order reader..... | Accuracy controller..... | May 1, 1944 |
| Alonzo, Collins..... | 48-87..... | Porter..... | Apr. 29 |
| Fava, Frank..... | 60-61-81-86..... | Stock helper..... | Apr. 28, 1944 |
| Dittmore, Dorothy..... | Accounts payable..... | Moon Hopkins operator..... | Apr. 27, 1944 |
| Hgba, Gertrude..... | Catalog order unit..... | Calculator operator..... | Do. |
| Fox, Ellis..... | Maintenance plant..... | Painter..... | May 1, 1944 |
| Ferina, Josephine..... | Billing..... | Record clerk..... | Apr. 28, 1944 |
| Locht, John..... | Central repair..... | Repairman..... | Do. |
| Flowers, Richard..... | Cafe..... | Dishwasher..... | May 3, 1944 |
| Anderson, Iva..... | do..... | Bus girl..... | Apr. 27, 1944 |
| Vitrano, Mary..... | 35-42..... | Stock helper..... | May 1, 1944 |
| McCullough, Margareta..... | Passenger elevators..... | Elevator operator..... | Do. |
| Lindsey, Ruby..... | Order reader..... | Reader..... | May 4, 1944 |
| French, Mary..... | do..... | do..... | Do. |
| Welker, Florena..... | Packing..... | Completer..... | May 1, 1944 |
| Schaln, Morry..... | Jewelry repair..... | Engraver..... | Apr. 28, 1944 |
| Robey, Lillian..... | Household commodities..... | Messenger..... | May 1, 1944 |
| Evans, Thomas..... | 45-57..... | Checker-packer..... | May 3, 1944 |
| Rehm, Dolores..... | 31-36..... | Order filler..... | Do. |
| Floyd, Dolly..... | 23-24..... | Packer..... | May 1, 1944 |

As to dismissals on April 26, 27, and 28 of Margine Fenner, Lesly Wilson, and Kuhl, Vincent, respectively, grievance reports have been filed by these employees through Local No. 20, with me as grievance officer, and it will be necessary, therefore, that some additional investigation be made.

I would appreciate having at your earliest convenience, a full statement with respect to these three dismissals as well as these employees' personnel files.

JOHN D. GOODLOE,

Duly Authorized Representative of the Operating Manager of the United States of Montgomery Ward & Co.

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO. 289

MAY 4, 1944.

Mr. JOHN D. GOODLOE,
8th Floor:

I submit herewith for approval the names and reasons for dismissal of employees removed from the pay roll for cause from 11:45 a. m. on Wednesday, April 26, 1944, to date:

| Name | Department | Job | Date removed | Reason for removal |
|-------------------------|-------------------------|----------------------------|--------------|--|
| Fenner, Margine..... | 16-17-71..... | Order filler..... | Apr. 26 | Neglect of duties; disturbed other employees working with her by making loud and insulting remarks to them. |
| Wilson, Lesly..... | 64-66-72-74-Pits..... | Porter..... | Apr. 27 | Refused to clean office which had been a part of his regular duties. Stated he would first have to consult union. |
| Kuhl, Vincent..... | 23-24-26..... | Stock helper..... | Apr. 28 | Had been repeatedly warned to do less talking while at work and stop disturbing other employees in parts of the department where he did not work. Disregarded warnings and was found soliciting union memberships in the department while he was supposed to be at work. Stole one-half-dozen handkerchiefs to which he confessed in a signed confession on May 1, 1944. |
| Wiener, Manuel..... | 35-42..... | do..... | May 1 | Repeatedly punched his timecard from 15 to 30 minutes before he was supposed to and before starting to work. Found loafing in department. Record of employment shows abuse of lunch and wash-pass periods. |
| Boswell, Ralph..... | 48-75-76-83-84-87..... | Stockman..... | May 4 | Went on leave of absence Feb. 28, 1944. Due back Mar. 25, 1944. Extended to Apr. 28. Failed to return. |
| Bergeson, Olga..... | Cashiers..... | Cashier..... | Apr. 28 | High school advises was born in 1930. Falsified birth certificate. Only 14 years old. |
| Imburgia, Rosemary..... | 31-36..... | Order filler..... | Apr. 26 | Went on leave of absence Feb. 27. Due back Mar. 27. Failed to return. Couldn't be depended on. Absent frequently. Often late. Came in last time after several days' absence and said he'd been in jail. |
| Schramm, Helen..... | Order reader..... | Accuracy controller..... | May 1 | Work record very unsatisfactory. Tried out on several jobs and failed on all of them. |
| Alonzo, Collins..... | 48-87..... | Porter..... | Apr. 29 | Went on leave of absence Feb. 9, 1944. Failed to return. |
| Fava, Frank..... | 60-61-81-86..... | Stock helper..... | Apr. 28 | Went on leave of absence Feb. 24, 1944. Failed to return. |
| Dittmore, Dorothy..... | Accounts payable..... | Moon Hopkins operator..... | Apr. 27 | Went on leave of absence Feb. 24, 1944. Failed to return. |
| Hgba, Gertrude..... | Catalog order unit..... | Calculator operator..... | Apr. 27 | Failed to report since Mar. 22, 1944. |
| Fox, Ellis..... | Maintenance..... | Painter..... | May 1 | Went on leave of absence Feb. 28, 1944. Failed to return. |
| Ferina, Josephine..... | Billing..... | Record clerk..... | Apr. 26 | Went on leave of absence Feb. 25, 1944. Failed to return. |
| Locht, John..... | Central repair..... | Repairman..... | Apr. 26 | Went on leave of absence Feb. 25, 1944. Failed to return. Known to have another job. |
| Flowers, Richard..... | Cafe..... | Dishwasher..... | May 3 | Not heavy enough for work; broke many dishes—was disinterested in work. |

| Name | Department | Job | Date removed | Reason for removal |
|---------------------------|-------------------------|------------------------|--------------|---|
| Anderson, Iva..... | Cafe..... | Bus girl..... | Apr. 27 | Unsatisfactory as a bus girl; not dependable and refused to follow instructions. |
| Vitrano, Mary..... | 35-42..... | Stock helper..... | May 1 | Failed to return from leave of absence. |
| McCullogh, Margareta..... | Passenger elevator..... | Elevator operator..... | May 1 | Has not reported for work since Apr. 7. |
| Lindsey, Ruby..... | Order reader..... | Reader..... | May 4 | Hired to report on Apr. 4 but failed to report. |
| French, Mary..... | do..... | do..... | May 4 | Hired to report on Apr. 4 but failed to report. Contacted by phone—said she was not interested in working. |
| Welker, Florena..... | Packing..... | Completer..... | May 1 | Caught tearing up multiple entry tickets, causing incomplete orders and delaying service on orders. |
| Schalin, Morry..... | Jewelry repair..... | Engraver..... | Apr. 28 | Worked only 2 days and hasn't reported since. |
| Robey, Lillian..... | Hse. com..... | Messenger..... | May 1 | Failed to report since March 24th. |
| Evans, Thomas..... | 45-57..... | Checker-packer..... | May 3 | Came to work April 27 very intoxicated. Was suspected of being under influence of liquor on previous occasions. |
| Rehm, Dolores..... | 31-36..... | Order filler..... | May 3 | Employee admitted disposing multiple entry sheets. Said she couldn't keep up with the work. |
| Floyd, Dolly..... | 23-24..... | Packer..... | May 1 | Hired April 2 but never reported for work. Tried to contact by phone several times but received no answer. |

L. L. FOOTH, Manager, Chicago House.

CHICAGO, ILL., May 6, 1944.

Mr. P. D. SOWELL,
Section 5-A.

In view of the information submitted in your memo of May 5, 1944, and the subsequent discussion with Mr. C. M. Odorizzi and yourself, I have approved on behalf of Mr. Wayne C. Taylor, Operating Manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., Inc., the following dismissals of employees in such plants and facilities made subsequent to 11:45 a. m. on Wednesday, April 26, 1944.

| Name | Department | Job | Effective date |
|------------------------|--|-------------------------|----------------|
| Anderson, William..... | Display products..... | Packer..... | Apr. 28, 1944 |
| Bertini, Anthony..... | General supply..... | do..... | Do. |
| Gibson, Josephine..... | Administration cafe..... | Bus girl..... | May 2, 1944 |
| Henning, Wilma..... | C. A. P..... | File clerk..... | Apr. 28, 1944 |
| Kramer, Fred..... | General supply..... | Stock helper..... | Apr. 28, 1944 |
| Rader, Adelaide..... | Miscellaneous merchandise..... | Watch record clerk..... | Do. |
| Sexton, John..... | Administration building painting and decorating..... | Painter foreman..... | Do. |
| Van Nice, James..... | Display general..... | Copy writer..... | May 3, 1944 |

JOHN D. GOODLOE,
Duly Authorized Representative of the Operating Manager
of the United States of Montgomery Ward & Co.

MAY 5, 1944.

Releases since Apr. 26, 1944

| Name | Reason | Department | Job title | Date effective |
|------------------------|-----------------------|---|----------------------|----------------|
| Anderson, William..... | Failed to report. | Display..... | Packer..... | Apr. 28, 1944 |
| Bertini, Anthony..... | do..... | General supply..... | do..... | Do. |
| Gibson, Josephine..... | Rejected by medical. | Administration cafe..... | Bus girl..... | May 2, 1944 |
| Henning, Wilma..... | Failed to report. | Central accounts payable..... | File clerk..... | Apr. 28, 1944 |
| Kramer, Fred..... | do..... | General supply..... | Stock helper..... | Apr. 28, 1944 |
| Rader, Adelaide..... | Not adapted for work. | Miscellaneous merchandise, watch..... | Record clerk..... | Do. |
| Sexton, John..... | Failed to report. | Administration building, painting and decorating..... | Painter foreman..... | Do. |
| Van Nice, James..... | do..... | Display, general..... | Copy writer..... | May 3, 1944 |

CHICAGO, ILL.,
May 6, 1944.Mr. V. R. EDSTROM,
Fashion House Manager, Section 4-3.

In view of the information submitted in your memo of May 4, 1944, and the subsequent discussion with Messrs. P. D. Sowell and C. M. Odorizzi, I have approved on behalf of Mr. Wayne C. Taylor, operating manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., Inc., the following dismissals of employees in such plants and facilities made subsequent to 11:45 a. m. on Wednesday, April 26, 1944:

| Name | Department | Job | Effective date |
|--------------------------|-----------------------------|--------------------------|----------------|
| Mugnalo, Frank..... | Division M-40, PTX..... | Stock helper, B..... | Apr. 29, 1944 |
| Zych, Dolores..... | Packing PTX..... | Completer packer, B..... | Do. |
| Filipello, Anthony..... | Division H. and D. PTX..... | Stock helper, B..... | Do. |
| Sostrich, Helen..... | Division S..... | Prep. clerk, IIA..... | May 2, 1944 |
| Walters, Lawrence J..... | Division F..... | Stock helper, B..... | Do. |
| Alamshaw, Hanna J..... | Packing..... | Sorter, A..... | May 3, 1944 |

JOHN D. GOODLOE,
Duly Authorized Representative of the Operating Manager of the United
States of Montgomery Ward & Co.

MONTGOMERY WARD & Co.,
Chicago, May 4, 1944.Mr. JOHN D. GOODLOE,
Section 8-A:

I submit herewith for approval, the names and reasons for dismissal of employees removed from the pay roll for cause since 11:45 a. m., on Wednesday, April 26, 1944, to date:

| Name | Department | Job | Date removed | Reason for removal |
|--------------------------|-----------------------------|--------------------------|---------------|---|
| Mugnalo, Frank..... | Division M-40 PTX..... | Stock helper, B..... | Apr. 29, 1944 | Confessed theft. |
| Zych, Dolores..... | Packing, PTX..... | Completer packer, B..... | do..... | Confessed mail fraud. |
| Filipello, Anthony..... | Division H. and D. PTX..... | Stock helper, B..... | do..... | Confessed theft. |
| Sostrich, Helen..... | Division S..... | Prep clerk IIA..... | May 2, 1944 | Failed to pass required medical examination. Employee recognizes physical condition and possibility that working on present job may be detrimental to her health. Planned to leave pay roll in 1 month. |
| Walters, Lawrence J..... | Division F..... | Stock helper, B..... | do..... | Falsification of time card. |

| Name | Department | Job | Date Removed | Reason for Removal |
|--------------------|------------|------------|--------------|--|
| Alamshaw, Hanna J. | Packing | Sorter, A. | May 3, 1944 | Originally hired Nov. 5, 1943. Removed from pay roll records on Jan. 12, 1944. Reason—failed to report. Re-hired Feb. 8, 1944. Failed to report for work on Apr. 27 and again on May 1 and May 2 not notifying supervisor of absence after repeated instructions to do so on previous occasions of irregular attendance. |

MONTGOMERY WARD & Co.,
V. R. EDSTROM,
Fashions House Manager.

CHICAGO, ILL., May 6, 1944.

Mr. M. E. GARRISON,
Assistant Retail Store Manager, Section 1-B.

In view of the information submitted in your memo of May 4, 1944, and the subsequent discussion with Messrs. P. D. Sewell and C. M. Odorizzi, I have approved on behalf of Mr. Wayne C. Taylor, operating manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., Inc., the following dismissals of employees in such plants and facilities made subsequent to 11:45 a. m. on Wednesday, April 26, 1944.

| Name | Department | Job | Effective date |
|-------------------|--------------|------------------------|----------------|
| Erna Clift | 31-32 | Part-time salesperson | May 3, 1944 |
| Walter L. Tadeja | Warehouse | Part-time stock helper | Apr. 27, 1944 |
| Iva Ruth Anderson | Luncheonette | Bus girl | May 2, 1944 |

JOHN D. GOODLOE,
Duly Authorized Representative of the Operating Manager of the United States of Montgomery Ward & Co.

MAY 4, 1944.

Mr. JOHN D. GOODLOE,
Eighth Floor.

I submit herewith for approval, the names and reasons for dismissal of employees removed from the pay roll for cause from 11:45 a. m. on Wednesday, April 26, to date:

| Name | Department | Job | Date removed | Reason for removal |
|--------------------|--------------|-------------------------------|---------------|---|
| Erna Clift | 31-32 | Part-time salesperson | May 3, 1944 | Theft of merchandise, signed confession secured. |
| Walter L. Tadeja | Warehouse | Stock helper (job part time). | Apr. 27, 1944 | Reported for work on 2 occasions, punched time card and disappeared. When questioned concerning no out punch on time card admitted attempt to secure pay without working. |
| Iva Ruth Anderson. | Luncheonette | Bus girl | May 2, 1944 | Reason 14-6, false employment record. |

M. E. GARRISON,
Assistant Retail Store Manager, Retail Store 801.

MONTGOMERY WARD & Co.,
Chicago, Ill., May 8, 1944.

Memorandum for Mr. P. D. Sewell:

In view of the information contained in your memorandum of May 8, and the subsequent discussion had with you, I have approved, on behalf of the operating manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., the following dismissals of employees from service in such plants:

| Name | Department | Job | Effective date |
|----------------------|------------|-----------------|----------------|
| Bartels, Ruth | Billing | Record clerk | May 5, 1944 |
| Branstatter, Dorothy | do | Scaler | May 3, 1944 |
| Macko, Mary | do | Typist | Do. |
| Zeitner, Charles | Division F | Stockhelper, B. | May 4, 1944 |
| Sochat, Marvin | do | do | May 6, 1944 |
| Bass, Kenneth B. | do | do | Do. |

With respect to the dismissal of Herbert Block on April 27, for unsatisfactory attendance and poor attitude toward requirement of being punctual, I understand you will furnish me promptly with full information along the lines requested and I will advise you my decision in the matter of this dismissal as promptly thereafter as possible.

JOHN D. GOODLOE,
Duly Authorized Representative of Operating Manager for the United States.

MAY 8, 1944.

Mr. JOHN D. GOODLOE,
8A:

Following is a list of people dismissed. This is in addition to the lists given to you May 5, 1944:

| Name | Dept. | Job | Date removed | Reason |
|----------------------|------------|-----------------|---------------|---|
| Bartels, Ruth | Billing | Record clerk | May 5, 1944 | Falsified medical report. Has been treating for epilepsy for 6 years but answered "No" to questions during examination. |
| Block, Herbert | 62-88 | Order filler | Apr. 27, 1944 | Attendance very unsatisfactory. Poor attitude toward the requirement of being punctual. |
| Branstatter, Dorothy | Billing | Scaler | May 3, 1944 | Falsified employment application. |
| Macko, Mary | do | Typist | do | Do. |
| Zeitner, Charles | Division F | Stockhelper, B. | May 4, 1944 | Confessed falsification of time card. |
| Sochat, Marvin | do | do | May 6, 1944 | Confessed dishonesty—destruction of customers' orders. |
| Bass, Kenneth B. | do | do | do | Do. |

P. D. SOWELL.

MAY 6, 1944.

STUART S. BALL, Secretary.

In Mr. Taylor's absence your letter to him of May 4, 1944, was handed to me about 5 yesterday afternoon.

Your understanding of the effect of the notice which I issued on May 4, concerning employees dismissed or discharged from service in the Chicago plants and facilities of Montgomery Ward & Co. on and after April 26, 1944, is not in accord with mine and certainly it was not my intention in issuing this notice to order the reinstatement of the employees discharged.

With respect to such dismissals the notice provided that they "shall not be effective unless or until the reason for said dismissals have been submitted to, and approved by, the operating manager for the United States or his duly authorized representative." The information with respect to 45 of such dismissals were submitted to me yesterday. After reviewing the data submitted in connection with these 45 cases, and after discussing them with Messrs. Sowell and Odorizzi, I approved on behalf of the operating manager for the United States all of such dismissals except three cases.

With respect to these three cases I had received grievance complaints from the employees involved, and as to those three cases it will be necessary that I ascertain fully the facts and circumstances before a decision can be made concerning either the approval or disapproval of their dismissal. It is my understanding that if their dismissal is approved, then the action originally taken by the company without the knowledge, consent, or approval of the operating manager for the United States will stand as of the date made. On the other hand, it is my understanding that if the action originally taken by the company is not approved, such employees are to be reinstated as of the date of their dismissal.

I wish to take this opportunity to again say that it has been, and still is, my intention to be fair and impartial in the controversy between the union and Montgomery Ward & Co. I do not desire to take any action which will result in giving the union any special privileges, nor action which will interfere with the operation of the business of Montgomery Ward & Co.

JOHN D. GOODLOE,

Duly Authorized Representative of the Operating Manager for the United States of Montgomery Ward & Co.

MONTGOMERY WARD,
Chicago, May 4, 1944.

Mr. WAYNE CHATFIELD-TAYLOR,
Chicago, Ill.

DEAR SIR: Your representative, John D. Goodloe, has ordered the reinstatement of employees discharged for cause in the normal operation of Ward's business. Among them are employees discharged not only for thievery and dishonesty and for refusal to perform their assignments, but also for soliciting union membership on company time in violation of long-established company rules, and for engaging in violent acts against other employees while on the picket line.

You have previously provided union representatives, not employees of the company, with a military escort and have permitted them to post bulletins throughout Ward's properties.

These actions have seriously interfered with the operation of the business. They are special privileges which the union never obtained through the legal processes of collective bargaining.

Obviously these actions are designed to interfere with the free choice of employees in the election to be held Tuesday, May 9.

We demand that no change be made in long-established company rules, and that no further special privileges be granted the union.

MONTGOMERY WARD & Co., INC.,
By STUART S. BALL, *Secretary*.

MAY 5, 1944.

Mr. JOHN A. BARR,
Assistant Secretary and Labor Relations Officer,
Montgomery Ward & Co., Chicago, Ill.

DEAR MR. BARR: As you know, the Executive order of the President dated April 25, 1944, pursuant to which the Secretary of Commerce, acting for and on behalf of the United States of America, took possession of and has since that time been operating the plants and facilities of Montgomery Ward & Co. located in Chicago, Ill., required the Secretary of Commerce to take such action as may be necessary and appropriate for compliance with the directive orders of the National War Labor Board dated January 15, 1944, and April 5, 1944.

On Thursday, April 27, Mr. Wayne C. Taylor, operating manager for the United States of the Chicago plants and facilities of Montgomery Ward & Co., addressed

a memorandum to all officials of Montgomery Ward & Co. and to the manager or other persons in charge of each plant or facility, directing that they forthwith take such action as may be necessary and appropriate for compliance with the War Labor Board directive orders as aforesaid.

Compliance not having been obtained in this regard, Mr. Taylor on Friday, April 28, released a statement, copy of which is attached; and on Saturday, April 29 designated the undersigned until further notice to act as grievance officer.

At 6 Monday evening, May 1, I held a preliminary meeting with the union officers and members of the union grievance committee. This was for the purpose of reestablishing on behalf of the management labor relations with the union in accordance with the War Labor Board directive orders. This meeting was held in the customary place for meetings of that character. In addition to myself those present were Mr. Nathaniel Royall, special representative of the Secretary of Commerce, and the following representatives of Local 20: Leonard Levy, international vice president; Henry B. Anderson, president of Local 20; Adolph E. Loresch, secretary-treasurer of Local 20; Norman G. Twist, international representative; Sally Fash, Joseph Braun, Mildred Cunningham, Leona Brauvancha, Stanley Allen, Lillian Lewis, Edith Serrurier.

Since that meeting several informal discussions have been had with representatives of local 20, and I have now received from the union reports of numerous dismissals which occurred subsequent to December 8, 1943, and prior to April 26, 1944. I am being urged to proceed as promptly as possible in conducting hearings with respect to these grievances in the customary manner. In order that I may be in a position to do so, I will wish—

1. To secure a statement from the company supervisor who made the dismissal, together with such other information as the company may care to submit. After this information has been received, the various grievance cases will be set for hearing with adequate notice being given to the company, and with the request that the company be represented at such hearing by such person or persons as it may desire.

Attached are copies of union grievance reports with respect to eight dismissals, and I hope you can furnish me by noon tomorrow with a statement from the supervisor in each case, and such other information as you may wish to submit from the standpoint of the company.

Yours very truly,

JOHN D. GOODLOE,
Duly Authorized Representative of the Operating Manager of the United States of Montgomery Ward & Co.

MAY 5, 1944.

Mr. LEONARD LEVY,
Executive Vice President,
United Mail Order, Warehouse, and Retail Employees Union, Local 20,
Chicago, Ill.

DEAR MR. LEVY: This will confirm the telephone conversation just had with you that following the posting yesterday morning of the notices with respect to the dismissal of employees dismissed or discharged by Montgomery Ward & Co. in their Chicago plants and facilities subsequent to noon, April 26, 1944, when the Government took over such plants and facilities, there have been submitted to me to date for approval 45 of such dismissal cases. For the reasons I explained to you, it was necessary that I act as expeditiously as possible with respect to these dismissal cases. Accordingly I have ratified and approved, on behalf of the operating manager for the United States, all of these dismissals except 3. These 3 were the only ones on the list submitted to date that were included in the list of the members of your union who you stated had been improperly discharged subsequent to noon, April 26, and for whom grievance complaints asking reinstatement would be filed. The decision in these 3 cases, as well as any subsequent ones of this character, will be made as soon as the facts can be fully developed.

As I explained to you, the company personnel, as well as the company's records which I would need to consult in order to develop the facts, have been inaccessible due to the necessity of the National Labor Relations Board representatives to establish the eligibility list and make the other preparations necessary for the election to be held Tuesday next.

For the same reason, as well as the fact that there have been many demands on my time in Mr. Taylor's absence, I have not been able to proceed as expeditiously as I had hoped with respect to the 20 grievance cases Mr. Anderson had

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submitted to me with respect to dismissals of employees in the Chicago plants and facilities of Montgomery Ward subsequent to December 8, 1943, and prior to April 26, 1944. As soon as the election has been held, I see no reason why we cannot proceed with the consideration and disposition of these cases promptly. From our several discussions, I think you appreciate the fact that I cannot order reinstatement until all of the facts can be ascertained.

Very truly yours,

JOHN D. GOODLOE,
Special Assistant to Secretary of Commerce.

The CHAIRMAN. The committee will stand adjourned until June 6, at 10 a. m.

(Whereupon, at 4:05 p. m., the committee adjourned until June 6, 1944, at 10 a. m.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

TUESDAY, JUNE 6, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to adjournment, at 10 a. m., in the committee room of the Committee on Ways and Means. New House Office Building, Hon. Robert Ramspeck (chairman) presiding.

Present: Representatives Ramspeck (chairman), Clark, Byrne, Monroney, Dewey, Elston, and Curtis.

The CHAIRMAN. The committee will come to order, please.

The order of the hearing this morning will be a prepared statement by Mr. Avery, the chairman of the board, to be followed by a statement by Mr. Barr, and then a statement by Mr. Ball, after which the committee will question the witnesses.

Mr. Avery, we are glad to have you before the committee; and you may remain seated, if you wish, while you read your statement.

I will ask the audience to please be quiet so we can all hear.

Will you proceed, Mr. Avery?

STATEMENT OF SEWELL L. AVERY, CHAIRMAN OF THE BOARD,
MONTGOMERY WARD & CO., INC., ACCOMPANIED BY: STUART
S. BALL, SECRETARY OF THE CORPORATION, IN CHARGE OF
THE LAW DEPARTMENT; AND JOHN A. BARR, ASSISTANT
SECRETARY OF THE CORPORATION, MANAGER OF LABOR
RELATIONS

Mr. AVERY. The preliminary statement, Mr. Chairman, is the expression of great satisfaction that the company have this opportunity.

My preliminary remarks will be restricted to a very brief statement that we have used for a year or two to describe Wards' labor policy, and the second is a letter which I should like to read.

Wards' labor policy is easily stated. It is based on these six points:

Union membership: Wards does not interfere in any manner whatsoever with the employees' choice of organization or representation.

Collective bargaining: Wards bargains in good faith with any organization which represents the majority of its employees.

Contracts: In accordance with the law Wards will reduce to writing and sign any agreement reached as a result of such bargaining. Wards now has a considerable number of such agreements with various unions.

Closed shop: Wards is opposed to all forms of the closed shop or

compulsory union membership. Liberty requires that an employee be free to join, to refuse to join, or to resign from a union without losing his job. Liberty requires that an employer be free to employ the person best suited for the work. Employees are free to join or not to join the union as they wish. The company fully respects this privilege.

Seniority: Wards, in filling vacancies and in determining employees to be laid off or called back, considers experience, ability, performance, and length of service.

Mr. BYRNE. Will the gentleman please indicate where he is reading from? I have his statements here, but I don't seem to follow that.

Mr. AVERY. You have not this statement.

Mr. BYRNE. I beg your pardon.

Mr. AVERY (continuing). Wages: Ward's policy is to pay wages as high or higher than those paid by other employers in the community for similar employment.

This letter is one written by a Michigan attorney some 20 years ago, and I read it because it embodies so definitely the principles that guide the company in this work.

DEAR Mr. MERSHON: I thank you for your letter of the 16th, and for the papers enclosed with it, which deal with the subject of the closed shop. I have read them with great interest, and if the principle of the closed shop is right, the American Revolution was a vain thing, and the Constitution of the United States is folly. The Revolution was based and fought out on the assumption, and declaration, that all men are equal "in the right to life, liberty, and the pursuit of happiness." The object of the struggle was accomplished, and to make it secure to the people of the United States the Constitution was adopted which made it "the supreme law of the land" that "no person shall be deprived of life, liberty, or property, without due process of law," nor "be denied the equal protection of the laws."

Our entire system of Government, both National and State, exists to make effective those provisions of the Constitution. The closed shop is a means which, in very fact, deprives a person of his most essential and vital liberty, on which depend both his life and property, and denies him equal protection of the laws. If a person can work, by means of which he can support his life, or can procure work by which he can carry on his enterprise, by means of which he can support his life, only upon such terms as the masters of the closed shop permit, his life and liberty are in their control, and his equality under the laws becomes his equality of being controlled by those masters. This is so self-evident that only the statement of it is needed for assent to it.

What is most needed, and I think greatly needed, is teaching in our schools, and making it a part of the education of the young, that our Government is the means alone by which those priceless provisions of the Constitution can be enjoyed.

The rule of the closed shop, and the law of the Constitution, cannot both exist and be obeyed. The question for each American is this: Which of them do you stand for?

Please pardon me for this long letter. I could not touch the subject and say less.

Mr. Chairman, following your own direction as to the reading of this company's statement, which is one thing but is divided, for the reading, in the order of its interest, it will be read, first, by Mr. Barr, with your permission, who is an officer and the manager of our labor relations; second will be the legal treatment by the head of Ward's legal department, and secretary of the company, Mr. Stuart Ball. I will follow with a summary.

The CHAIRMAN. All right, Mr. Barr, will you give your full name to the reporter?

Mr. BARR. John A. Barr.

Would the committee prefer that I stand or remain seated?

The CHAIRMAN. You can do whichever you please, Mr. Barr.

Mr. BARR. Gentlemen of the committee, Ward's labor policy is to obey the law and to observe the highest standards of wages, hours, and working conditions which prevail in the industry.

Wards has not fought and is not fighting unionism. Ward's fully appreciates that well-managed unions pursuing legitimate objectives can, in cooperation with management, serve advantageously the owners, the workers, and the public.

While freely granting labor unions the full right to bargain collectively, Ward's has refused to grant union demands that employees be required to become union members and pay union dues in order to retain their jobs.

Each case which Ward's has had before the War Labor Board has involved this issue. In each case the Board has supported the union's demand and ordered Ward's to maintain the union by firing any union member who fails to pay his union dues or otherwise fails to maintain his union membership. In all cases where the union has so requested, the Board has also ordered Ward's to support the union by checking off union dues from wages and remitting them to the union treasury.

When Ward's refused this illegal requirement in 1942, the President ordered Ward's to accept. When Ward's again refused the same requirement in 1944, the President used the Army to seize Ward's properties.

Although there is no law which requires employers to maintain the membership of unions by checking off union dues and firing employees who resign from unions, nevertheless the powers of Government have been used to force these requirements on Wards and innumerable other employers.

Wards said in its telegram to the President:

The United States Post Office, presumably acting on orders from Washington, removed its 70 employees from the mail-order house. For more than 30 years the Post Office had maintained this department for the purpose of handling parcel-post shipments to Ward's customers.

Wards also said:

The Post Office refused to deliver to Wards incoming parcels from customers on which postage had been fully paid.

Attached to this statement is an affidavit of Mr. O. B. Higgins, Wards' traffic manager, setting forth the facts with respect to the Post Office's support of the Chicago strike.

At this time, Mr. Chairman, I would like to offer the original affidavit signed by Mr. Higgins. Copies have been duplicated and are before you.

The CHAIRMAN. Without objection, it will be made a part of the record.

(The affidavit referred to is as follows:)

AFFIDAVIT

STATE OF ILLINOIS,
County of Cook, ss:

O. B. Higgins, being duly sworn upon his oath deposes and says:
He is traffic manager of Montgomery Ward & Co., Inc., with offices in Chicago, Ill.

The facts with respect to postal service at Ward's Chicago plant during the strike in April 1944, are as follows:

1. The post office discontinued its distributing unit in Ward's plant.

The post office distributing unit in Wards' Chicago mail-order house was established on March 12, 1913, 2 months after the inauguration of parcel post service. This unit continued to operate without interruption until April 13, 1944, except for the period from January 1, until March 8, 1923, when the Chicago Post Office attempted to handle this distribution in their new Van Buren station. The attempt was discontinued because of excessive damage and delay to parcels.

A picket line was established at the mail-order house on April 12, 1944.

At 10 o'clock on the morning of April 13 there were two post-office supervisors, 53 regular post-office clerks, 18 substitute post-office clerks, and two laborers on duty in the post office distributing unit at Ward's Chicago plant.

At 10:15 a. m., on April 13 the foreman, Mr. Risley, was instructed by the Chicago Post Office to send all employees with the exception of the supervisor and three clerks to the main post office and discontinue distributing parcel post in the Montgomery Ward post office distributing unit. At approximately 10:20 a. m., Mr. E. J. Kruetgen, Chicago postmaster, informed Mr. Kirby, our mail-order traffic manager, in a telephone conversation that the suspension of the operations in the Chicago plant was due to the fact that the Chicago postmaster did not have authority to order postal employees to report for work at a building where there was danger to the employees.

At 2 p. m., April 13, Mr. Kirby was notified by Mr. Bruce Wells of the postmaster's office that the operation of the post office distributing unit at Ward's Chicago mail-order house would be suspended at the close of business on April 13 until the present difficulties between Ward's and their employees were settled.

At 4 p. m., April 13, eight substitute post-office employees reported back to the post office distributing unit in Ward's Chicago mail-order house to sack out all parcels which had been distributed and labeled by post-office employees.

2. Ward's continued its operation during the strike. Ward's continued to have mail to be sacked, distributed, and handled during each day of the strike and transportation facilities for the removal of the mail from the plant were available.

On the evening of April 12 Ward employees loaded 1,470 sacks of mail and 990 outside pieces into three boxcars which were switched via the Milwaukee Railroad to the Union Station. All of this mail had been sacked and distributed by post-office employees during the day of April 12. The Union Depot Co. unloaded these cars and delivered the mail across the platform to the Chicago Post Office.

On the evening of April 13 Ward employees loaded 3,854 sacks of mail and 2,100 outside pieces in 6 boxcars, which were similarly handled. Of this mail loaded on the evening of the 13th, 40 percent had been sacked and distributed by post-office employees on the 12th, 40 percent sacked and distributed by post-office employees on the 13th, and 20 percent sacked and handled by Ward employees on the 13th.

On the evening of April 14 Ward employees loaded 2,824 sacks of mail and 704 outside pieces into 4 boxcars which were similarly handled.

On the evening of April 15 Ward employees loaded 2,029 sacks of mail, 1,224 outside pieces, and 1,230 c. o. d. parcels into 4 boxcars which were similarly handled.

The mail loaded on the evenings of April 14 and April 15 was all sacked and handled by Ward employees.

From the morning of the 16th up to and including the evening of the 24th, Ward employees sacked and handled 10,458 sacks, 5,425 outside pieces, and 5,760 c. o. d. pieces of fourth-class mail consigned to Ward's mail-order customers. One hundred and ten truckloads of this mail were delivered to the Chicago Post Office on trucks driven by Ward employees on the 19th, 20th, and 21st. Forty-seven truckloads of this mail were delivered to the Chicago Post Office on the 22d and 24th by Willett Co. trucks.

At noon on April 24 the union announced in the press that the strike would be called off at 10:45 that evening.

At 4:45 p. m. on April 24 we were notified by Mr. E. L. Fotre, assistant superintendent of mails, to the effect that distribution would be resumed by postal employees in Ward's Chicago mail-order house on the morning of Wednesday, April 25.

3. The post office refused delivery of part of Ward's mail.

Prior to the strike which began on April 12, it had been the custom of Ward's to pick up at the Chicago Post Office all incoming first-class mail and all incoming parcel post on which the postage had been fully paid. This was done at Ward's expense in order to obtain deliveries at the hours best suited to its operating schedules. On Monday, April 17, the Post office at Chicago was requested by

Mr. Kirby to deliver to Ward's all incoming parcel post on which postage had been fully paid. The Chicago Post Office refused to comply with this request.

At noon on April 19 Mr. Kirby called the Chicago post office and requested that they deliver to Ward's all incoming first-class mail. Mr. Wentzel, assistant postmaster, advised that the Post Office Department always takes the stand that during a strike they can only give the same service that was given before the strike and so they could not now increase their deliveries to us as it would be contradictory to the rules and regulations of the Department. Accordingly, the Chicago post office refused to deliver our first-class mail.

As explained, the Chicago post office refused Ward's request of April 17 to deliver in-bound parcel post. Following this refusal, Ward's itself picked up in-bound mail as follows: On April 18 Ward's contractor picked up 668 sacks and 575 outside pieces of in-bound parcel post at the Chicago post office which were delivered to Ward's through the Chicago Tunnel Co. On April 19 Ward's contractor picked up 346 sacks of in-bound parcel post at the Chicago post office which were delivered to Ward's through the Chicago Tunnel Co. On April 22, 24, and 25 Ward's contractor picked up a total of 422 sacks and 354 outside pieces of in-bound parcel post at the Chicago post office which were delivered to Ward's by truck.

Prior to the strike and during the strike the Chicago post office did deliver the following classes of mail to Ward's Chicago mail-order house:

1. Special-delivery mail.
2. Postage-due parcels.
3. Insured parcels.
4. Returned C. O. D. parcels.

The above facts are either known to me personally or have been reported to me by my subordinates in the normal course of business, and are true to the best of my knowledge and belief.

O. B. HIGGINS.

Subscribed and sworn to before me this 2d day of June 1944.

[SEAL]

B. SHRIMAN, Notary Public.

My commission expires September 23, 1947.

Mr. BARR. Mr. Cargill, Deputy First Assistant Postmaster General, attempted to explain the discontinuance of the distributing unit which had been maintained in the mail-order house since 1913 on the ground that the regular drivers, who had taken the post-office oath, would not deliver the mail to the railroads, and the post office could not trust the mail to persons who had not taken the oath and might not be responsible. Mr. Cargill did not deny that there was work to be done in the distributing unit each day of the strike.

Contrary to Mr. Cargill's statement to you, the drivers who hauled this mail from the distributing unit to the railroads prior to the strike had not taken the post-office oath. This oath has not been administered to these contract drivers in Chicago for the past many years. Drivers of 20 years' service have never taken, or been asked to take, the oath.

No representative of the post office explained to Ward's, either at the time the distributing unit was discontinued or at any other time during the strike, that any of the methods being used to haul mail from the plant were irresponsible or in any way unsatisfactory. The 4,500 sacks of mail which were accepted and distributed by the post office but not taken out before the strike were hauled out of the plant by railroad boxcar with full knowledge of, and without any objection from, the post office.

Mr. Cargill's attempted explanation for discontinuing the distributing unit was obviously an afterthought not supported by the facts.

Mr. Cargill explained the failure to deliver Ward's incoming mail by the Department's policy to remain neutral during a strike. In this connection we cannot improve on the editorial comment of the Chicago Daily News as follows:

Of course, both before and during the strike, the post office was under obligation to deliver every piece of prepaid mail to Ward's office. It was under obligation to Ward's as the addressee of the mail. It was also under obligation to the sender of the mail who had bought stamps, affixed them to the mail, and paid for a service. The fact that Ward's, like many other firms, had seen fit to relieve the post office of a part of its obligation at the receiving end—purely as a matter of convenience to the recipient of the mail—would seem in nowise to relieve the post office of its responsibility if the recipient chose to cease that practice or was forced to cease it. Certainly nothing in the situation relieved the Post Office Department of its responsibility to the sender of the letter or package. That responsibility was, and is, to deliver the mail to the addressee.¹

Now I would like to say a few words about the election in Chicago, and the action of the National Labor Relations Board in that connection.

Ward's said in its telegram to the President:

Ward's welcomes the suggestion that an election be held at an early date to determine the employees' choice of representation. The question whether the union represents a majority of the employees in Ward's mail-order house and store in Chicago has been pending since November 16, 1943. Ward's has repeatedly urged a prompt determination of this question, and has publicly announced a readiness to recognize the union when proof of its representation is presented.

The sole question was whether the union represented a majority of the employees in the mail-order house and retail store, each of which had been previously established as a separate bargaining unit. On two occasions Ward's, in writing, notified the National Labor Relations Board of the question and stated to the Board its willingness to have the union's status determined either by an election or a check of the union's membership cards.

The Labor Relations Board, however, failed to take any action until after the union had called a strike and the Government had seized possession of Ward's properties. The Board then issued an order, not that an election be held in the retail store and mail-order house units, but that the independence of these two units be destroyed. The Board ordered that both units be combined in Ward's Schwinn warehouse, and that an election be held in this new unit. The Schwinn warehouse is located over 4 miles from the retail store, it is engaged in a different type of business, its employees do a different type of work, it has different hours and a different wage structure. The managers of the two branches are independent of each other. The Labor Relations Board had previously established the Schwinn warehouse as a separate bargaining unit. The union had a large and unquestioned majority in the Schwinn warehouse. In the retail store, on the other hand, less than 15 percent of the employees were having union dues checked off from their wages, and more than 80 percent had repudiated the union by coming to work through the union's picket line.

While the Schwinn warehouse, over 4 miles away was included in the same unit as the store, several thousand employees in other departments in the same building as the store were excluded. The clear purpose of this gerrymandering was to use the union's majority in the Schwinn warehouse to insure a union victory in all three locations.

¹ Chicago Daily News, May 29, 1944.

The Board, conscious of the union's lack of support in the retail store, deliberately mixed the ballots to prevent a separate count of the store vote.

Mr. Reilly, a member of the National Labor Relations Board, testified that Ward's and the union had agreed between themselves to combine these three major units into one contract in December 1942, and that this agreement between Ward's and the union to combine the three units was one of the chief reasons for the Board's combining them. Mr. Reilly testified:

The reason we put * * * (the Schwinn warehouse) in was because the company and the union themselves had combined them in the contract of 1942 which had expired.

Ward's never agreed to combine the retail store, the mail-order house, and the Schwinn warehouse into one contract or into one bargaining unit. The contract to which Mr. Reilly referred in his testimony was written in its entirety by the War Labor Board and illegally forced upon Ward's by the President. It was a document which Ward's had no hand in preparing and to which it never agreed.

The fact is that the Labor Relations Board gerrymandered the units to insure a union victory and to prevent the truth as to the union's lack of representation in the store from becoming known.

Ward's said in its telegram to the President:

Ward's will continue to observe the wages, hours, and related terms of employment as they were before the expiration of the former contract. Ward's has made no change in any of these conditions since December 8, 1942.

Ward's also said:

Ward's has violated no law nor denied to the union any privilege to which it is legally entitled.

Mr. Davis, chairman of the War Labor Board, testified before this committee that all the War Labor Board asked Ward's to do in January 1944 was to "maintain the present status" until the election was held, and that—

What we got from Montgomery Ward's was the most thoroughgoing and deliberate tearing down of the relationship. Every effort was made that they could make to destroy the status that existed at that time.

The Attorney General, Mr. Biddle, testified before the committee that it would have been impossible to hold a fair election without Government possession of the properties. Mr. Biddle said that the company refused to maintain the status quo and refused to negotiate. He testified Ward's had done everything it could for 3 months to destroy the union, and that employees were being improperly and wrongfully discharged because of their union membership.

Neither Mr. Davis nor Mr. Biddle, nor any representative of either, has ever made any investigation as to the truth of these charges. Neither man has the slightest evidence to support the charges they have made to you. Their statements are completely false.

The facts are that after December 8, 1943, Ward's continued to observe the wages, hours, and related terms of employment as they were before the expiration of the former contract. Ward's stood ready at all times to bargain with the union in the five bargaining units where there was no question over the union's majority status. Ward's did nothing during this period which was intended to destroy or which

had the effect of destroying the union or interfering with it in any way. Employees were discharged only for normal reasons such as thievery, insubordination, and incompetence. Not a single employee was discharged because of his union affiliation. The National Labor Relations Board, charged by law with the duty of protecting employees from discrimination for union activities, has not filed a single complaint against Ward's. Actually for the period during which the Attorney General has charged Ward's with wholesale firings, fewer people were discharged than had been discharged during the same period the previous year when the union contract was in force.

While Ward's properties were operated by the Secretary of Commerce, his representatives met with the union and listened to its charges. After investigating the facts, the Secretary did not reinstate a single employee.

The Attorney General's attempt to blacken Ward's labor history as an excuse for the Government's action is further illustrated by the following passage from his opinion letter to the President, upon the authority of which the President issued his order of seizure. The Attorney General said:

In the proceedings before the National Labor Relations Board which resulted in the certification dated February 23, 1942, the Board found that the company had been guilty of unfair labor practices in its plant in Chicago.

On the contrary, the National Labor Relations Board has never found Ward's guilty of any unfair labor practice in Chicago.

These vicious and deliberate attacks on the company's integrity must not go unanswered in this record. Ward's calls upon the Attorney General to retract these false assertions.

The same tactics of misrepresenting Ward's labor history were followed by Mr. Reilly in his testimony before the committee. Mr. Reilly testified that Ward's has a history of unfair labor practices which was an important contributing factor to the Chicago strike.

Mr. Reilly referred to four cases as the basis for his conclusion.

The irrelevance of these four cases to the strike in Chicago is made apparent by the following facts:

1. Three of the four cases referred to by Mr. Reilly arose more than 6 years ago and the fourth case arose over 3 years ago. None of them involved relations between Ward's and the union at Chicago.

2. There is no evidence that the employees at Chicago had any interest in, or even knew about, these old cases at other locations. Certainly they were never pointed to by the union as a factor in the strike.

3. In the only case which Ward's has had before the National Labor Relations Board involving its relations with the Chicago union, the Board itself found that no unfair labor practice had been committed.²

The extent to which Mr. Reilly attempted to mislead the committee is further illustrated by his testimony that thousands of representation cases have been settled by checking membership cards and that if Ward's had agreed to this method the case could have been settled within a few days. The fact is that Ward's stated to the union when the representation question first arose, that Ward's was willing to have the issue determined either by an election or by a check of the union's membership cards against the pay roll. In January 1944

² 30 N. L. R. B., No. 41 (p. 226).

Ward's, in writing, informed the Labor Relations Board of this offer. Again on March 6, Ward's wrote to the Labor Relations Board that—the facts indicate the necessity for a * * * determination of employee representation either by a card check or by an election. As previously stated, we have no objection to the Board's making its determination by either method.

It was the union, not Ward's, which refused to check membership cards. Mr. Reilly's implication that decision of the representation question was delayed by Ward's refusal to agree to a check of cards was nothing less than a fraud.

Ward's said in its telegram to the President:

Although Ward's welcomes an early election, Ward's cannot, under the law, grant special privileges to the union pending the election.

The contract which Ward's signed at Chicago in December 1942, under duress, at the direction of the President, expired December 8, 1943.

On November 16, 1943, Ward's told the union it would negotiate a new contract covering five of the seven bargaining units established at Chicago. Ward's questioned whether the union represented a majority of employees in the mail-order house and retail store because less than 20 percent in those two units were then having union dues checked off from wages.

The union refused to show that it was the majority choice of the employees by either submitting membership cards or consenting to an election. Instead, the union asked the War Labor Board to order the expired contract reinstated without any proof that the union had any legal right to represent Ward's employees or that Ward's had any legal right to contract with the union on any terms whatsoever.

On January 15, 1944, the War Labor Board ordered the expired contract extended until the union's right could be determined. This was an illegal order. The National Labor Relations Act gives to the National Labor Relations Board the exclusive power to determine the choice of employees as to their representatives for purposes of collective bargaining. Under the War Labor Disputes Act the orders of the War Labor Board must conform to the National Labor Relations Act. By deciding that the union at Chicago was entitled to the benefits of a contract before the National Labor Relations Board had decided whether it was entitled to represent Ward's employees, the War Labor Board was usurping a power which Congress never gave to it and which Congress expressly forbade it to exercise.

Ward's said in its telegram to the President:

To grant maintenance of union membership before the election is held, as the War Labor Board has ordered, would not only violate the employees fundamental liberty of free choice but it would also permit the union to demand the discharge of all the employees who have resigned from the union since December 8, 1943.

The status quo had changed more than a month before the Board's order of January 15, 1944. Numerous employees had voluntarily resigned from the union, as they had the right to do. Many more had ceased paying dues to the union, as they had the right to do. The Board, however, ordered the reinstatement of the terms of the expired contract. That contract provided that any employee who was a union member on December 8, 1942, or who thereafter became a union member must keep up his union membership or be fired.

If Ward's had obeyed the Board's illegal order of January 15, 1944, Ward's would have been compelled to discharge all employees who

had resigned from the union and thus deprive them of a chance to vote in the election. The union could have expelled all employees who refused to pay dues, and Ward's would then have been compelled to discharge them before the election was held.

It was for these reasons that Ward's in its telegram to the President, said:

Compliance with the Board's order would then make a mockery of the democratic right of employees to choose their bargaining representatives freely and without interference.

All Ward's employees had the right under the law to share in the choice of bargaining representatives, freely and without coercion from anyone.

If Ward's had obeyed the Board's order, its employees who had of their own free will resigned from the union or refused to pay union dues could be denied the right to vote and the right to their jobs unless they rejoined the union or paid up their dues.

Mr. Reilly's testimony shows that the National Labor Relations Board and the War Labor Board knew that a fair and legal election could not be held if the Board's order was enforced against Ward's. Unknown to Ward's, a meeting was held in Judge Vinson's office on April 17. Members of the War Labor Board and the National Labor Relations Board were present with their counsel. The purpose of the meeting was to discuss the proposed seizure of Ward's properties to enforce the War Labor Board order.

At that meeting the Labor Relations Board refused to hold an election if union maintenance were enforced before the election. The Labor Relations Board pointed out that a fair and legal election could not be held if the maintenance-of-membership provision was placed in effect.

The War Labor Board, however, did not, as it should have done, withdraw its order. Instead, it secured from the union a promise in writing not to ask that maintenance of membership be enforced.

Ward's, then, was admittedly right in saying that the War Labor Board's order was illegal and would, if enforced, make a mockery of the rights and liberties of Ward's employees.

Ward's telegram to the President said:

By ordering the retroactive reinstatement of maintenance of membership, the War Labor Board has demonstrated its utterly unfair character, and its complete disregard of the command of Congress that its orders conform to the National Labor Relations Act.

The facts now demonstrate the unfair character of both the Labor Relations Board and the War Labor Board.

If it was unfair and illegal to enforce maintenance of membership at Ward's before the election was held, it was unfair and illegal to have ordered Ward's to reinstate maintenance of membership in the first place.

If it was unfair and illegal to order Ward's to reinstate maintenance of membership, it was illegal and immoral to seize Ward's property to force it to obey that order.

By secretly securing from the union its promise not to ask for enforcement of the maintenance of membership requirement of the War Labor Board's order, both the Labor Relations Board and the War Labor Board demonstrated that they knew the order was unfair and illegal. Nevertheless, knowing the order to be unfair and illegal,

both Boards conspired to recommend the seizure of Ward's property for the professed purpose of enforcing the order.

This astounding trickery, designed solely as a means of granting special privileges to a labor union, exposes the entire seizure of Ward's as a fraudulent deception.

Thank you, gentlemen.

Mr. Ball will now proceed to read the second part of this statement, dealing with the legal issues.

The CHAIRMAN. Mr. Ball, will you give your full name, and your position with the company, to the reporter?

Mr. BALL. Stuart S. Ball, secretary, Montgomery Ward & Co., Inc., in charge of the law department.

STATEMENT OF STUART S. BALL, SECRETARY, MONTGOMERY WARD & CO., INC., IN CHARGE, LAW DEPARTMENT

Mr. BALL. Mr. Chairman and gentlemen, Ward's Chicago property was taken from it by force to compel Ward's to obey an order of the War Labor Board. The Attorney General has admitted to you that this was the real reason for the seizure.

Ward's refused to comply with the order of the War Labor Board because Ward's believed the order to be illegal.

To enforce the illegal order of the Board, the President ordered the seizure of Ward's property. Ward's believed the President's order to be an unconstitutional usurpation of power and refused to obey it.

Ward's position is based upon the guaranties of liberty set forth in the Constitution of the United States.

1. Before the passage of the War Labor Disputes Act, the War Labor Board had no legal authority whatever to command employers to obey its orders.

The War Labor Board was created by an Executive order.

This order recited that it had been issued by the President "by virtue of the authority vested in me by the Constitution and the statutes of the United States." No such authority had in fact been given the President by the Congress. At least one court has pointed out the falsehood in the order, saying of the Board:

Its creation and jurisdiction are not based upon any express statutory authority, in spite of what is said in the preamble of Executive Order No. 9017 creating it.¹

The first order of the War Labor Board against Ward's was issued when the Board had no right to command Ward's to do anything. Congress, the only law-making authority under the Constitution, had not empowered the Board to order any of the things which the Board demanded of Ward's.

The President, as well as the Board, was wholly without constitutional authority. Nevertheless, in deep respect for the President and his great responsibility in time of war, Ward's at his command signed a contract at Chicago providing for maintenance of membership. This was the contract which expired December 8, 1943.

Because the Board and the President had no legal right whatever to force Ward's to obey the Board's order, Ward's could not take the case to court. When a public official has no power to do more than give advice, the courts will not listen to a lawsuit which claims that

¹ *Baltimore Transit Co. v. Flynn* (50 Fed. Supp. 382).

the advice is bad. Courts will act only when legal rights have been violated. Although the Board was making many threats against employers who refused to obey its orders, those threats were clearly bluffs. The court will not permit themselves to be used merely to call a bluff.

The case of the *Motor Freight Carriers, Inc.*, decided Friday, June 2, by the Court of Appeals for the District of Columbia, was an attack on a War Labor Board order issued before Congress passed the War Labor Disputes Act. It held that those orders were no more than advice, and could neither be enforced nor reviewed.

2. The War Labor Board has violated the War Labor Disputes Act in its orders against Ward's issued since Congress passed that act over the veto of the President.

Section 7 of the War Labor Disputes Act gave the War Labor Board the right to decide labor disputes, but limited that right to disputes "which may lead to a substantial interference with the war effort."

The act then commanded the Board, before reaching any decision, "to conduct a public hearing on the merits of the dispute." In order to hold a proper hearing, the Board was empowered to subpoena witnesses, to require the production of written evidence, and to take testimony.

The Board was authorized, after holding a public hearing, to issue an order which "shall provide for terms to govern the relations of the parties." But this power was limited. The orders of the Board must be fair and equitable; they must be limited to terms and conditions "customarily included in collective bargaining agreements," and they must conform to the provisions of other laws, including specifically the National Labor Relations Act.

In other words, the Congress, while giving the Board a power which it had assumed before but never rightfully possessed, was careful to limit the jurisdiction of the Board, to insist that its procedure follow the traditions of our law, and to prevent the Board from disobeying the laws already in force.

In its orders against Ward's since the passage of the War Labor Disputes Act, the Board has disobeyed the commands of Congress in every respect.

First. The report of the subcommittee of the Senate Judiciary Committee discloses that the War Labor Board had no evidence whatsoever in its files that the disputes in Ward's retail stores and mail-order houses threatened the war effort.

Second. The Board has never held a proper hearing in a Ward case. The Board has called no witnesses to its meetings. Union spokesmen have made speeches, full of misrepresentations and untruths. None of these people were placed under oath. Ward's has been given no opportunity to cross-examine these speakers. The unions have not been required to produce any evidence whatsoever to support their wildest charges. The Board's orders have not been based upon any facts, but have simply reflected the Board's predetermination to give maintenance of membership to any union which asked for it.

Third. The Board has ordered the check-off of union dues, which would require Ward's to give support to the union in violation of section 8 (2) of the National Labor Relations Act. The Board has ordered maintenance of membership, which would compel Ward's to

discriminate with regard to terms of employment in violation of section 8 (3) of that act. In addition, the Board in the Chicago case—as was pointed out in part I of this statement—wrongfully assumed the power to grant contract rights to a union which had not shown itself entitled to represent Ward's employees.

Ward's brought suit in the District Court of the District of Columbia on October 5, 1943, to enjoin enforcement of the Board's order in the Detroit case. On March 14, 1944, Judge Goldsborough of that court held that Ward's complaint stated a good cause of action.

Similarly, Ward's brought suit to test the legality of the Board's orders on January 15, 1944, and April 5, 1944, in the Chicago case. This suit was still pending when the President ordered Ward's properties seized.

3. The War Labor Board and the Department of Justice have sought to deprive Ward's of an opportunity for a court decision upon the illegality of the Board's actions.

When Ward's brought suit against the Board's Detroit order, the Board, represented by the Attorney General's office, asked the court to dismiss the case on the ground that the Board's orders are still not "legally binding," but were only "advice" which Ward's need not accept.

On the same day this plea was filed, the Board in a public opinion announced that obedience to the Board's orders was "involuntary" and "at the order of the Government."²

The district court would not tolerate such hypocrisy, and on March 14, 1944, refused to dismiss Ward's case, holding that when the Board obeyed the law its orders became law. The court held, however, that Ward's complaint "sets forth a cause of action"—in other words, that if what Ward's said was true, the Board had disobeyed the law.

The Board and the Attorney General then refused to proceed with the trial of the case, and asked the court of appeals to grant a special appeal. On Friday, June 2, the court of appeals refused to do this, and remanded the case to the district court. The tactics of the Board and the Attorney General have delayed a court decision for 8 months.

When Ward's brought similar suits in the same court attacking the Board's orders at Chicago and other locations, the Board sought and obtained a delay after agreeing with Ward's:

No action will be taken by any of the defendants to force compliance with the challenged orders unless advance notice and an opportunity to request a temporary restraining order is given.³

On April 12, 1944, the Attorney General's office called Ward's Washington attorney to advise him, ostensibly in conformity to this agreement, that the Board was planning to refer the matter of Ward's noncompliance at Chicago to the President "without recommendation," but would not do so until noon of the following day. By saying that the Board would make no recommendation, the Department of Justice made it impossible for Ward's to secure a temporary injunction since no threat of seizure or other penalty could be shown.

The testimony of Mr. Reilly before this committee and the report of the subcommittee of the Senate Judiciary Committee show that the Board in fact did recommend that Ward's property be seized.

² Vanadium Corporation (13 W. L., Rep. 527).

³ Letter of Ward's Washington attorney, Henry F. Butler, to Messrs. Fanelli and Burstein of the Department of Justice dated February 12, 1944.

Had Ward's been told this, as the Department of Justice had agreed to do, Ward's could have sought a temporary injunction against the Board.

4. If the Board had obeyed the law the Board's order against Ward's could have been enforced without having to seize Ward's property.

If the Board's order were merely advice, Ward's property should not have been seized simply because Ward's disagreed with that advice. The Constitution of the United States by guaranteeing freedom of speech, guarantees freedom of thought and opinion. The citizens of this Nation cannot be deprived of their property or their liberty simply because they disagree with the advice given them by a Government official, even if he be the President of the United States.

If the Board's order was law, then it could have been enforced in the courts. The Attorney General and the Chairman of the War Labor Board have denied this, simply because the War Labor Disputes Act does not specifically provide either for court review or court enforcement of Board orders. The Attorney General cited as authority, one case dealing with the old Railroad Labor Board.⁴ The Supreme Court based that decision on the fact that the language of the statute showed that Congress explicitly intended that the Board's order be publicized but not enforced by any means whatsoever—especially not by seizure. The Attorney General well knows that in many subsequent decisions, including those relating to the Railway Labor Act,⁵ the Supreme Court has enforced or enjoined statutes or orders despite the failure of Congress to provide for court enforcement or court review.

The basic principle of our system of laws is that courts will provide a remedy whenever legal rights have been violated. The Supreme Court has said:

The Government of the United States has been termed a government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right.⁶

If the Congress intended that orders of the War Labor Board be merely advice, Congress never intended them to be enforced by the seizure of property. If the Congress intended them to be obeyed, then they may be enforced in the courts, and their validity may be attacked in the courts.

If the Board had the right, which we deny, to order maintenance of membership at Chicago, the union had a right to compel Ward's by court action to accept maintenance of membership. Instead the union called a strike.

If the Board had the right, which we deny, to order maintenance of membership at Chicago, the Board had the right to compel Ward's by court action to obey its order. In overruling the Attorney General's motion to dismiss Ward's suit against the Board, Judge Goldsborough said:

The Court is of the opinion that if the Board's proper order was not obeyed it would have the right to go into the district court and ask for a mandatory injunction to compel compliance with its order.

⁴ *Penn. Federation v. Penn Rd. Co.* (267 U. S. 203).

⁵ *Texas & N. O. R. Co. v. Brotherhood* (281 U. S. 548); *Virginia Ry. Co. v. System Federation* (300 U. S. 515); *Shields v. Utah, Idaho Cent. R. Co.* (305 U. S. 177).

⁶ *Marbury v. Madison* (1 Cranch 137).

Instead of seeking the aid of the courts the Board, and the Attorney General recommended, and the President ordered, the forcible seizure of Ward's property.

The lack of respect for our Constitution which these officers of the Government have shown is finally demonstrated by their resort to bayonet law while Congress was in session. If the Nation had been really endangered by Ward's desire to preserve its constitutional rights, surely the Congress of the United States would have acted. If the law was defective, the Congress could have remedied the defect. If new laws were necessary, the Congress could have passed them. If the emergency had been other than fictitious, Congress would have acted with sufficient promptness.

If the executive branch of our Government really respected our democratic form of government, they would never have substituted the bayonets of the Army for due process of law.

5. By his order seizing Ward's Chicago properties, the President was usurping a power never granted him by Congress and denied him by the Constitution he was sworn to uphold and defend.

The President sought to enforce the illegal orders of the War Labor Board by an Executive order which was equally illegal.

Congress gave the President, in section 3 of the War Labor Disputes Act, the power to seize—

any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith—

whenever operations are interrupted by labor disputes.

This is the only act of Congress which by any stretch of the imagination can justify the seizure of Ward's Chicago properties.

The Attorney General obtained his court order at Chicago by untruthfully asserting to the court when Ward's was not present to deny it, that Ward's Chicago properties—

were and are equipped for, and in fact engaged in, the manufacture or production of articles and materials required for the war effort.

He submitted an affidavit of the Under Secretary of Commerce verifying this assertion.

The unquestioned fact is that Ward's Chicago properties do not manufacture nor produce any articles or materials whatsoever. The affidavits which Ward's filed with the court, copies of which are available to the committee, and which I shall submit in connection with this statement, demonstrate this fact beyond the shadow of a doubt. Ward's does have three small factories which manufacture or produce materials which are required for or useful in the war effort; but none of these factories are in the city of Chicago, all are managed and function as units separate and apart from the operating divisions at Chicago, and none of them were seized. The Attorney General obtained his court order by asserting an untruth, which must have been known to him to be untrue.

The Attorney General tried to tell you, as he tried to tell Judge Holly, that "production" means something else than "production" and includes "storage, repair, maintenance, and distribution"—in other words, almost the sum total of the Nation's economic activities.

Section 3 of the War Labor Disputes Act was passed to authorize the seizure of the coal mines. Section 3 was never adopted by Congress as a means of enforcing orders of the War Labor Board issued under section 7 of that act. Section 3 doesn't say a word about the War Labor Board. It merely broadened the power to seize war plants granted to the President by section 9 of the Selective Training and Service Act of 1940, adding the interruption of production due to strikes as another cause for seizure and Government operation.

Mines which supply raw materials from which finished articles are fabricated, oil wells and coal gas plants which produce fuel to run our industrial machines, and factories, which turn raw materials into munitions of war and the articles essential to our existence—those are the plants, mines, and facilities which the Congress authorized the President to seize and to operate.

The Attorney General knows very well that Congress never gave the President the power to seize and operate corner grocery stores, neighborhood drug stores, garages, filling stations, and warehouses. Yet every one of those businesses would be a plant equipped for "production" under the definition of that word which the Attorney General advanced to you.

The Attorney General's real argument before Judge Holly and before this committee is that the President in time of war is a military dictator and doesn't have to have an act of Congress to authorize him to seize private property. In his brief before Judge Holly, the Attorney General argued:

In time of war, the President has power to take possession of property of citizens when required for the prosecution of the war.⁷

No business or property that is essential to the conduct of the war is immune from the exercise of that power.⁸

To wage war successfully and to fulfill his duties as Commander in Chief at time of war, the authority of the President must extend not only to matters of a strictly military nature, but also to all phases of civilian life which contribute in any way to the prosecution of the war.⁹

The Attorney General believes that Congress is unnecessary in time of war. He told Judge Holly:

* * * The aggregate of the President's war powers * * * is extensive and independent of congressional grant.¹⁰

He illustrated the extent to which the President may go "in the absence of legislation specifically dealing with critical problems" ¹¹ by citing the "emergency price control program," the establishment of the National Defense Mediation Board, and the creation of the Supply Priorities and Allocation Board. These, he said "are mere samples of the inherent powers that must be coupled with the grave responsibilities of the Executive Office."¹²

In other words, Congress did not need to pass any Price Control Act, any War Labor Disputes Act, or any Second War Powers Act authorizing a rationing program. The President, according to the Attorney General, had the power as Commander in Chief to handle all these problems without any act of Congress.

⁷ Biddle brief, p. 59.

⁸ Biddle brief, p. 81.

⁹ Biddle brief, p. 82.

¹⁰ Biddle brief, p. 64.

¹¹ Biddle brief, p. 65.

¹² Biddle brief, p. 66.

The Attorney General was asked by this committee:

Can you give us any reason at all why there was any necessity for Congress to pass the War Labor Disputes Act?

He replied:

I think in all these cases the Congress is anxious, and so is the Executive, to pass specific statutory powers * * *.

The Attorney General further claims that the President is as independent of the courts as he is of Congress. He told Judge Holly:

In time of war, the courts will not substitute their judgment for that of the President, or review his determination as to the gravity of the emergency or the necessity of the taking of the particular property.¹³

Where the President proclaims "the emergency and need," the courts will not "inquire into the accuracy of the President's finding." In other words, the President may proclaim an obvious lie as an excuse to seize the property or repress the liberties of a citizen, but the courts in time of war must not interfere.

The order seizing Ward's properties was conceived and executed on the assumption that the President in time of war can do anything he wants to do, no matter how arbitrary, how unfair, or how destructive of the liberties of the people, so long as he describes his action as necessary for the war effort. The courts may not question his action, and Congress must not forbid it.

To this proposition the answer lies in the language once used by the Supreme Court:

If this position is sound to the extent claimed, then when war exists, foreign or domestic, * * * the commander * * * can, if he chooses * * * substitute military force for, and [to] the exclusion of the laws, and punish all persons, as he thinks right and proper, without fixed or certain rules. The statement of this proposition shows its importance, for if true, republican government is a failure, and there is an end of liberty regulated by law.¹⁴

The Constitution does not say a single word about any "war powers" of the President. The Constitution merely says that the President shall be—

Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States when called into the actual service of the United States.¹⁵

Under the Constitution, the powers of the President as Commander in Chief are purely military.¹⁶ Hamilton, in the Federalist (No. 69) said that the authority of the President as Commander in Chief—

would amount to nothing more than the supreme command and direction of the military and naval forces, as first general and admiral of the Confederacy.

As the first general and admiral of the United States, the President remains the servant, not the master, of the people.

The faith of the authors of our Constitution was placed, not in the President, but in the Congress. While the Constitution gave the President no war powers other than military leadership, the Congress was expressly given wide and inclusive authority to see that war is waged successfully. The express enumeration of the powers given to Congress excludes any possible claim that the President also possesses them.

¹³ Biddle brief, p. 86.

¹⁴ *Ex Parte Milligan*.

¹⁵ Article II, sec. 2.

¹⁶ *Fleming v. Page* (9 How. 603, at p. 615).

Congress alone, and not the President, can declare war.

Congress alone, and not the President, can provide for calling out the militia.¹⁷ The President, although he commands the militia when called into service, cannot himself call them out unless Congress has given him the authority to do so.

The President, even though he is Commander in Chief, has no power to compel the enlistment of any citizen in the armed forces until Congress has authorized him to do so.¹⁸ It is to Congress that the power "to raise armies" and "to provide a navy" is granted.

The President, although he is Commander in Chief, cannot even establish courts martial to discipline members of the armed forces unless Congress authorizes him to do so.¹⁹ Congress alone is given the power "to make rules for the government and regulation of the land and naval forces."

The President, although Commander in Chief, has no authority to punish civilians in military courts even for supposed offenses against the conduct of the war.²⁰ Congress alone is given the power "to define and punish * * * offenses against the law of Nations," and those offenses must be tried in the civil courts so long as those courts are open.

The President, although Commander in Chief, cannot levy contributions for the support of the armed forces until Congress has acted. Congress is given the power to "support armies" and "maintain a navy," and "to lay and collect taxes * * * to * * * provide for the common defense."

The President cannot even seize enemy property within the Nation's boundaries until Congress has delegated this power to him.²¹ Congress alone has power "to make rules concerning captures on land and water."

The war powers of the President today are vast and effective. But the source of those war powers is the Congress of the United States, which has granted those powers and prescribed the manner in which they must be exercised. What Congress has granted, Congress can take away. Congress, the living expression of democracy in action, can check abuses of power, no matter what the Attorney General may advise the President. What Congress has never granted, the President who observes his oath of office will not assume.

If the President cannot seize enemy property without the authority of Congress, he surely cannot seize the property of citizens when Congress has never authorized him to do so.

If the President cannot try civilians before military courts for offenses against the conduct of the war, he cannot punish civilians for supposed offenses by seizing their property without the semblance of a trial.

The authors of the Constitution had experienced and feared the concentration of autocratic power in one man. The Constitution shows how carefully they sought to guard against the ambitions of those who should hold the high office of President. The authors of the Constitution placed their confidence in the Congress.

¹⁷ *Martin v. Mott* (12 Wheat. 20).

¹⁸ *U. S. v. Williams* (302 U. S. 46).

¹⁹ *McClaghry v. Deming* (186 U. S. 49).

²⁰ *Ex parte Milligan* (4 Wall. 2).

²¹ *Brown v. U. S.* (8 Cranch 110).

The seizure of Ward's property was in direct defiance of the will of Congress and in complete disregard of the Constitution of the United States.

The CHAIRMAN. All right, Mr. Avery.

Mr. AVERY. Summary—the facts Ward's has recited show—

1. The Post Office aided the union during the strike at Ward's and sought to excuse its actions to this committee by misrepresenting the facts.

2. The National Labor Relations Board gerrymandered the bargaining units at Chicago to insure a union victory, and to force union representation upon the retail store employees who, by remaining at work during the strike, had clearly shown their rejection of the union.

3. The National Labor Relations Board has given a wholly false excuse for its action.

4. The War Labor Board, and the Attorney General, to distract attention from their own illegal acts, have untruthfully attacked Ward's labor policies.

5. The War Labor Board violated the law by granting a contract to the union when the union had refused to prove that it had any legal right to represent Ward's employees.

6. The War Labor Board, by ordering the retroactive reinstatement of maintenance of membership, would have made impossible the holding of a fair election among Ward's employees.

Obedience to that order would have forced Ward's, before the election was held, to discharge the many employees who had exercised their right to resign from the union.

7. The National Labor Relations Board and the War Labor Board conspired together to bring about the seizure of Ward's properties to enforce an order which they knew to be illegal and unfair.

8. The War Labor Board and the Attorney General have sought to prevent Ward's from obtaining a hearing in the courts on the illegality of the Board's orders, while seeking to impose those orders upon Ward's by force.

These facts show that the Post Office, the Department of Justice, the National Labor Relations Board, and the War Labor Board, with the approval of the President, have acted together to give illegal and unfair assistance to the C. I. O. union at Chicago.

Ward's experience ever since the passage of the Wagner Act has shown that the unfairness and prejudice illustrated by these actions is the common method by which these agencies are using the prestige of the Government to force the surrender of the liberties of employers and employees everywhere.

By their policies of giving unfair and illegal assistance to labor unions, these bureaus have destroyed the established procedure of collective bargaining and have encouraged labor strife. Mr. William M. Leiserson, Chairman of the National Mediation Board, pointed this out in a recent address, saying:

The unions * * * have come to depend on the Government to give them what they could not gain by collective bargaining with employers. And now, when the giving must stop because of the burdens of war and the necessity to control inflation, they turn in resentment against the Government like children against overindulgent parents * * *.

Government agencies are perhaps more responsible for the present labor situation than the unions and their leaders. The dependence of workers' organizations on the Government is as much the result of their policies as of union policies.¹

¹ 14 L. R. R. 72.

By seeking to force Ward's to obey an illegal order while depriving Ward's of a hearing in the courts, these agencies have shown their lack of respect for our Constitution and the fundamental rights which the Constitution guarantees. The Constitution is no longer the supreme law of the land if those whose rights are threatened are deprived of an opportunity to obtain the protection of the courts.

From its experiences, Ward's draws the conclusion that these many bureaus have formed a machine for purchasing political support from labor organizations.

Ward's has long believed that, when the public awakens to the degree of coercion used by the administrative agencies of the Government to force employers and employees to accept union restrictions in which they do not believe and which without such coercion they would avoid, it will rise in indignation. The public will demand that those appointed to office in these agencies act with simple fairness and obey the law or be removed from power.

The facts Ward's has recited show, finally, that the President, to force Ward's to obey an order known to his advisers to be unfair and illegal, ordered Ward's property seized by force.

The President's action in ordering the plant seized was the usurpation of a power not granted him by Congress and denied him by the Constitution he was sworn to uphold and defend.

The seizure of Ward's plant developed a spontaneous and continuing public indignation which resulted in this investigation. This indignation is easily interpreted. A free American people will not accept dictatorship.

The CHAIRMAN. The committee feels that in order to make a proper record we must cross-examine you three gentlemen separately. Now, of course, I do not mean by that that you cannot confer among yourselves, but in order to get at this thing in an orderly way, why, we will take you one at a time.

Mr. CLARK, you may examine Mr. Avery.

Mr. CLARK. Mr. Avery, do you consider the operation of your company as essential to the war effort?

Mr. AVERY. No, sir.

Mr. CLARK. Would you mind giving the committee some idea as to the geographic extent of your operations, and your annual turnover, the nature of what you sell and how many employees you have?

Mr. AVERY. Well, the location of course covers the United States, Congressman. The company has 630 or 640 or 650 retail establishments and minor ones of greater number, special stores, farm stores—I think some 80 besides that number and perhaps 200 so-called order offices. These are all normal retail establishments.

In addition to that, the company operates in nine locations mail-order houses, and in the Chicago location, in one house, we have a division designated as two houses by the specialization and differences that the nature of the business suggests.

The number of employees varies from, I should say—it is hard to say. At the present time, I believe the estimate is 78,000.

Retailing, as everyone knows, is a seasonal thing, and the height of the activity is, of course, the Christmas season. At that time it becomes necessary to bring in a large number, I should say. Starting perhaps early in October it will be necessary that Ward's hire or have

the obligation to employ something like 26,000 people who are temporary and who have to be trained so that they may meet the requirements of the customer when he buys or she buys the Christmas merchandise. The maximum employee list I should say would then be 100,000, and the minimum would be, I believe, under existing conditions, at least more than 60,000.

The volume, as I think was your last question—our highest volume was \$600,000,000 of sales. The merchandise that we supply—well, we have 40 divisions Congressman, and we sell those things usually found in retail establishments. The lines are divided very roughly into what you may call the hard lines, which is hardware, plumbing, paints, construction materials, tires, agricultural implements, things of that character. The normal drygoods store is found in the mid-section, and that is attire and fabrics, blankets, things of that general sort. The third classification would be household equipment, furniture of all sorts, hangings, decoration materials, floor coverings of all kinds, refrigerators, and things that could be used in the furnishing of a home.

Mr. CLARK. It has been suggested here that you probably serve from 25,000,000 to 30,000,000 customers annually. Do you care to give an estimate on that?

Mr. AVERY. The figure that you supply is the estimate that is made as closely as those familiar with the business are able to do it, Congressman. It necessarily is loose. It is first made up by the number of people coming into a store. It is very difficult to determine the number of times they may come in, and a customer may be estimated on the single sale or the full continuing year's service.

The mail-order situation is quite peculiar with the issue of around 6,000,000 large catalogs twice a year. The percentage of service that the individual customer gets from each book varies in a very large part. I think it is recognized that a small part of the book supplies the profitable end of the business, perhaps one-third, but the remaining thing is a sort of developer of business, and if one were to distribute the books merely to the active and profitable customer the result of that would be in the changes that life brings, a steady decline, and the results then require about the practice that history has proved necessary.

Mr. CLARK. I perhaps ought to know but I have to confess that I do not, and that is whether your sales are exclusively mail order or whether you have a store, a general store, in which you also sell.

Mr. AVERY. We have three ways of distribution. We first have the catalogs, simply the old, single catalog. The order was sent in by mail with the money and the designation guided by the information in the catalog indicates the order. That is the business of the mail-order houses.

Mr. CLARK. Do you have a store, a retail store, in addition to that?

Mr. AVERY. Now we have some 650 retail stores.

Mr. CLARK. I mean in Chicago.

Mr. AVERY. In Chicago, actually Chicago, not going on the outside, we have something that will illustrate, I think, your question, or answer your question. We have a retail store, and that is using the basement and first two stories of a large administrative modern office building. I think the sales of that store will approximate several

million dollars. Now, that is a normal retail store of the kind, Congressman, that you are accustomed in the city to use.

Mr. CLARK. Now, my question was—

Mr. AVERY (interposing). If I may answer the rest of your question, please. In the mail-order house, at the base of the store, is another retailing establishment that is not strictly mail order nor is it retail but some combination of the two, and that is long counters in which the people, looking over the books, under the guidance of clerks who assist in the description of merchandise may, from that position, write out the order of the customer as he stands. You understand he is now on the ground floor of a large mail-order house and above him is all this 150,000 separate items of merchandise stocked for mail-order delivery. With that order these things are immediately piped to each department and the attendants take that merchandise and send it down chutes and it is presented on the spot for the waiting customer in approximately 10 or 15 minutes.

There are dressing rooms where it is possible to try on the shoes or the attire, and he has a chance to make that same examination that would be made in a normal department store. If the size is wrong, the correction is easily made. That service itself does approximately as much, because it is very popular, as the store across the street that may be reached by a tunnel sells in the normal retail trade.

Now, in duplicating the stores, and it is common practice, we have the 650 stores of various sizes, some of them quite small, besides which there are farm stores, as I have said, of about 80 in number, and it is increasing, and it includes not farm implements alone but those things of particular interest to farmers, and that is usually separated from a store in the town which would be a normal one.

Now, in other places where we do not have stores we have order offices, and that is a small institution, usually, say, 30 or 40 feet in width and 50 or 60 feet in length, with its customary benches and desks and convenience for looking over the books. The merchandise comes to that place and permits, without the letter writing or the designation from a catalog, which is sometimes trying, the arrangement of the matter of credit, and that merchandise is shipped directly to that place, and then the customer may walk in there, examine it, try it on, accept or reject, and he has none of the difficulties of taking them back or returning them.

Mr. CLARK. It sounds very enlightening, but I am not inquiring about that.

Mr. AVERY. I am not trying to sell you this institution.

Mr. CLARK. Your operations throughout the country, in the transportation and delivery of goods, moves chiefly by rail or by the United States mail, or how?

Mr. AVERY. Mostly by mail, sir, by parcel post to a very large degree, freight and express also, and mail, airplane, whatever you wish.

Mr. CLARK. In other words, in this annual turn-over of some \$600,000,000 you would avail yourself pretty extensively of the United States transportation facilities?

Mr. AVERY. That would be the retail, that would be the shipment of the merchandise that would carry the normal stock display in the store? On that score; yes. Otherwise, the locations of the nine places would be the freight into that and then the distribution from

there on. The assumption has been of my associates that you had in mind that the mails were used to get that merchandise into the store.

Mr. CLARK. No, sir.

Mr. AVERY. No; that was not the practice.

Mr. CLARK. I only wanted to get an idea or bring up the thought that in the operation of Montgomery Ward & Co., which you say is Nation-wide, you do find it necessary to use extensively the Nation's transportation facilities and its mail facilities.

Mr. AVERY. Is anybody in the United States able to do anything else? I should not ask you questions, Congressman. The answer is "Yes."

Mr. CLARK. But your answer to my question as to whether you consider your operations essential or nonessential to an all-out war effort is "No"?

Mr. AVERY. Not more than any of the civic service. We are peculiarly a retail institution, Congressman, and we are just what other retail stores are. Our dimension means nothing. We are disappointingly a small part of almost every community that we serve.

Mr. CLARK. You are not drawing a comparison between the operations of Montgomery Ward & Co. and that of the corner store in my little city, are you?

Mr. AVERY. Whatever little city that is, do we happen to have a store in that place?

Mr. CLARK. Yes, sir; and I buy something in it every once in a while.

Mr. AVERY. Thank you.

Mr. CLARK. I happen to pay cash, by the way.

Mr. AVERY. May I say I am delighted to meet you and invite you to come again. As to the dimension of that store—would you mind mentioning the town?

Mr. CLARK. The town of Fayetteville, N. C.

Mr. AVERY. I am safe in saying that our small establishment is a small part of the retail end of that community.

Mr. CLARK. But your business as a whole is a very different thing from the man who happens to operate the store next door.

Mr. AVERY. No, sir; it is identical.

Mr. CLARK. It is identical?

Mr. AVERY. Our shoe department is made up of the same shoes that he will buy, from the same type of manufacturers and sold to the ordinary citizen, quite like any other retailer.

Mr. CLARK. What I have in mind, Mr. Avery, I am seeking to find out something about the nature of your business. I am not trying to catch you, I would not undertake to do that, but what I have in mind is the effect upon the life of the Nation of your business as compared to the small business in my home town. There is a difference there, is there not?

Mr. AVERY. I should say the notable difference is to be found in most of the stores exactly as in Ward's, and that difference, sir, is an elimination of the jobber, the wholesaler and other such services, to permit, like all change, an economy that would permit the supplying of more for less by this new system, but one that is 70 years old.

Mr. CLARK. It has been represented to this committee that Montgomery Ward & Co. have been granted by the Government various

priorities upon allegations that its operations are essential to the war effort.

Mr. AVERY. I should like to have, Mr. Chairman, a more intelligent expression on that question, and I feel sure that you can get it from Mr. Ball.

Mr. CLARK. I would be quite grateful for that.

Mr. BALL. Do you wish that at this time?

Mr. CLARK. No, we do not. We might as well wait.

Mr. BALL. All right.

Mr. CLARK. Mr. Avery, in your opening statement you read an interesting letter about the closed shop.

Mr. AVERY. Yes, sir.

Mr. CLARK. Do you make any distinction between that and the maintenance of union contracts that have been discussed here?

Mr. AVERY. Oh, yes; there is a distinct difference.

Mr. CLARK. What is your conception of that?

Mr. AVERY. It has been the common practice of taking the freedom of the individual away, and the difference is in degree. They deny him his freedom in determining whether he shall be or shall not be a member of the union, and it is imposed by the Bureau of the Government.

Mr. CLARK. Now, again, I am not so well schooled in these particular things, but I listened with interest to the discussion here of this maintenance of membership arrangement that the War Labor Board spoke of.

Mr. AVERY. Yes, sir.

Mr. CLARK. Do you consider that the individual has some right to choose his course under the maintenance of membership up to the point where the contract is signed?

Mr. AVERY. Well, he appears to have a great deal more than in actual experience he does, and the difficulty with the situation is that the general public are unfamiliar with it, they fail to understand what that situation is. We understand it through experience very well indeed. The Government is imposing them on employers and employees the machinery that has come out of the Wagner Act, which gives the privilege of the outside labor organizations to run in great freedom and what you might call if not racketeers, which is an objectionable phrase, then unioners, groups made from outside, made up of other things who have come to impose on particular retailers such pressure that the assumed freedom has, through fear and urgings, been lost.

Mr. CLARK. Was your objection to a renewal of the contract of 1942, or rather its extension for a period, based in part upon your objection to the maintenance-of-membership feature?

Mr. AVERY. Yes; largely.

Mr. CLARK. Now, that thought was embraced in the contract you executed, was it not?

Mr. AVERY. That was not a contract, sir. We did not execute it. The great danger in one protecting his position, Congressman, in time of war, is there goes up a great howl that this is a disloyal citizen who, in narrow selfishness and thought of nothing but his personal advantage, is rushing to impede the success of the Nation. That is a common shriek that you hear, and I guess you have heard it.

In order to do that, when we first made the condition, there was a strong recognition on the part of the Board that that propaganda would be effective and would mislead people to the point where they would have an adverse appraisal of Ward's and its standards and principles which had stood so high for so many years—70 years. The board of directors could not bring itself in unanimity to take the stand that would be so easily turned to its disadvantage and to the disagreeable charge that we were clinging to that under those circumstances, in consequence of which we put out a statement that although the President had no authority and although Congress alone would have the right to impose the closed shop, or any of the variations, that we would stand ready to follow the direction, if Congress passed a law making it legal. But there we were with the same situation, and so we added this sentence:

After very careful consideration, or if the President, acting as Commander in Chief, specifically directs it, we will respectfully obey it.

Mr. CLARK. Now, why did you do that?

Mr. AVERY. For the reasons I have just given you.

Mr. CLARK. Was it to protect your company against adverse criticism?

Mr. AVERY. It was to protect the company against that kind of machinery that we have been complaining of here, the propaganda, the pressure, and the fear of denunciation and loss of business that you would get through appearing to be what the machinery made you appear to be. At the present time, Congressman, you would be very interested to know if you mention Ward's name, that in spite of that fact, from the very first minute of the passage of the Wagner Act, we accepted it simply and completely, and there is not now and has not been any time in Ward's any resistance to the freest use of those things guaranteed in that act. We have not been against unions, but the surprise will come when instead of your consistent action, in some way the Nation has been convinced that Ward's is the enemy of labor, and we are the enemy of the machinery that this country must free itself from if we are to have genuine liberty in economics and the old progress which comes from freedom of enterprise.

Mr. CLARK. You do not believe in the War Labor Board at all?

Mr. AVERY. I do not believe in the War Labor Board? I believe it is a menacing reality that must be destroyed if it does not act in the integrity as in the summary I state. If we are to have such a law as that let us have it, and let those who mistakenly believe that that kind of trash can succeed in making a successful country, let us have the law tomorrow quickly and let you gentlemen here representing Congress stand up and put on the books that this situation of the closed shop in one form or another shall be the law of the land. We will make a real progress with that, because the terrors that will overcome us will approach very rapidly and we will soon be without any question as to whether the closed shop is a feasible economic method to include in the management of the greatest industrial Nation in the world.

Mr. CLARK. I do not want to cut you off at any time, Mr. Avery, but—

Mr. AVERY (interposing). I do not want to make a speech either. I did not like that one.

Mr. CLARK. Getting back to this thought, Congress, rightly or wrongly, has established for the duration of the war this War Labor Board to deal with labor disputes.

Mr. AVERY. I understand, Mr. Congressman, Congress has accepted a perfectly illegal instrument that the President brought up by himself selecting 10 people from this group and 10 people from the employer-employee group. They were his own people. He made an arrangement for the whole United States in some funny way. He quite definitely disappointed the position taken by the representatives that he had appointed to represent all of the industry in the whole United States. They did not represent anything except themselves. What he did up there was to ask them for their advice. They made three recommendations, and the one that he entirely disregarded was the one you are talking about, that he put in, and it is in effect at the present time as the result of that, in a situation that Congress did not like, and Congress, when it authorized this situation, put in angry note, a restriction on that, it did not give the full scope of the War Labor Board, it narrowed it, and what you are facing at the present time is a very critical abuse of the realities of the situation, because he has gone beyond your restrictions and has sought to stand up and do those things which you specifically excluded and which must be kept out, and in that respect he has grabbed private property without due process of law. I am making another speech, and I beg your pardon.

Mr. CLARK. I believe you did. If you will permit me, I will get back to the thought I had in mind.

Mr. AVERY. I am sorry to run you around.

Mr. CLARK. I am referring now specifically to an act of Congress, section 7 of the War Labor Disputes Act, to be specific.

Mr. AVERY. Yes, sir.

Mr. CLARK. Which, incidentally, was passed by the Congress over the President's veto.

Mr. AVERY. Yes.

Mr. CLARK. In which Congress undertook to set up a War Labor Board which, for the duration of the war, should undertake to deal with these labor disputes.

Mr. AVERY. Having to do with those people in this narrow group of war producers.

Mr. CLARK. Having to do with any labor disputes that may lead to a substantial interference with the war effort.

Mr. AVERY. I do not accept that.

Mr. CLARK. That is the wording of the act.

Mr. AVERY. I mean the wording does not include all these retail things. We cannot accept that, and no one does.

Mr. CLARK. I think we can get to an understanding of that. It appears here before this committee that that Board, since its establishment, has handled some 6,700 labor disputes.

Mr. AVERY. Congressman, could I interrupt you for just a minute?

Mr. CLARK. Yes, sir; go ahead.

Mr. AVERY. To make a clarification there?

Mr. CLARK. Go ahead.

Mr. AVERY. Outside of our Chicago relationships we do have a little plant built many, many years ago for the manufacture of agricultural implements and that is now manufacturing a few, incidentally, things like cream separators and pumps, small pumps. That provides, of

course, with the excellence of its machinery, an ability to make, incidentally, in addition to other war producing concerns, General Motors, some items, and the corporation is, in that sense distinctly at that location in the situation about which I think you are speaking.

Now, please be advised, Congressman, that in that situation the things that I have said do not apply. We recognize what Congress intended by this law that you mentioned, and we readily and completely accepted that. We have turned the property over willingly and are running it with efficiency in cooperation with the Government, a very narrow cooperation—I mean we are doing everything just as we did before and under their supervision.

Mr. CLARK. Now, getting back again—

Mr. AVERY. I would like very much to have the legal gentlemen take up the point that I think you are interested in.

Mr. CLARK. I promise not to ask you a legal question. I want to get your idea about policy. I think your own attorney will advise you that Congress has set up this War Labor Board with authority to consider these labor disputes which may lead to serious impairment of the war effort.

Mr. AVERY. I can understand that myself.

Mr. CLARK. Now, as I was saying a moment ago, it has been represented to this committee that this Board has handled some 6,700 such cases and that they have had to certify to the President only 18 of those cases. Now, what I want to ask you is: Do you or not consider that a wise policy under present war conditions?

Mr. AVERY. This gets over into some of the legal situations, because that is the analysis of these laws. The point that you make includes very few indeed of the kind of industries that you are speaking about here. That does not go to your stores and your retail establishments, those are manufacturing plants.

Mr. CLARK. Mr. Avery, the law says plainly, and you are a very smart man—

Mr. AVERY. Thank you.

Mr. CLARK. At least I feel that way about you.

The law says plainly the War Labor Board shall have jurisdiction to consider any labor dispute that may lead to a substantial interference with the war effort. Do you think it is wise or unwise? That is all I am asking about.

Mr. AVERY. We do not, in the situation before you, sir, have any occasion to consider that at all. I am glad to answer the question.

We have the purpose at this place where we work to cooperate with the Government very readily, and in our own interest, because we are citizens like everyone else, but this thing does not apply, say, in our Chicago situation, and the pretense that has been drummed up there makes it impossible for me to answer your question without calling your attention to those things that I have been very carefully presenting, Congressman, here. It does not apply in Chicago, and it is an extension that is wrong.

Mr. CLARK. I am asking this question—

Mr. AVERY (interposing). I am trying to answer. I am not trying to escape answering any question.

Mr. CLARK. I am asking you, with the war situation as it is today and with our situation on the domestic front as it is today, don't you think it both wise and necessary to have some Federal agency undertake to peacefully adjust these labor disputes?

Mr. AVERY. If you will refer to the summary I think you will find a better answer of what we think about that. We certainly agree, sir, that everything needed for the Nation's protection be established and maintained and respected by every good citizen, but we do not believe that these instruments are following that course, sir, and there is nothing in your questions that prevents us from joining readily in anything for the good of those people whom we serve with a high standard. We are being imposed on here under a guise of the situation that you convincingly present, Congressman. That machinery is not working out that way and it needs to be corrected. We hope you will find nothing that you can refute in these statements that we have presented. They have been most studiously restricted to things that are facts, that are true.

We are for this war; this is our war as well as everybody else's.

Mr. CLARK. Mr. Avery, Congress has undertaken to deal with this very vital and troublesome subject and you and your company may have justifiable reasons, I am not saying anything about that, as to why they do not agree with its work. It has been suggested that perhaps Congress should do something else about it. Then when I ask you your opinion as to the wisdom of having some board of this character act in that field you say it is a legal question.

Mr. AVERY. No, no; I did not say it was a legal question.

Mr. CLARK. Will you answer my question, then?

Mr. AVERY. I am not begging any questions and I will not be put in a position, willingly, Congressman, of evading any question that anyone in this room can ask. Our purpose is not to hide behind some unsatisfactory and disloyal and unpatriotic thing. We take pride in all these things that I have just suggested as much as anybody. We are trying to make a national service, and if you will see the correspondence that we are getting you would be convinced as to the number of people who think that we have arisen at a time that is necessary to save the freedom of this Nation.

Mr. CLARK. Now section 3 of this act—I do not want to be legalistic, I do not ask you legal questions except I know you are flanked by mighty fine counsel—section 3 authorizes seizures specifically, as your own attorney has referred to this morning.

Mr. AVERY. Yes.

Mr. CLARK. As to certain classes of industry. Do you approve of that?

Mr. AVERY. I am not familiar with that. This gentleman [indicating Mr. Ball] is an officer of this concern, as I am, and in concerns of these dimensions, as you will readily understand, sir, we divide our responsibilities and they head up. As to the details particularly, with a staff of some 30 lawyers in the concern, it brings up considerations that I am not competent to handle, and I would like to give you the position of the company by the man who heads that department. Would you ask Mr. Ball that question?

Mr. CLARK. Mr. Avery, I prefer to ask the man who got such a graphic picture in the paper.

Mr. AVERY. That was not my own device.

Mr. CLARK. I will try my best to keep away from the legal phases of it. Do you think it is possible to have effective domestic economy and war effort if labor disputes are controllable and controlled in one part of our domestic economy that is simply war production and left to run loose and uncontrolled in another part of our country?

Mr. AVERY. The racketeering situation, Congressman, that exists and has existed for years in your own part of the country and in the whole Nation in regard to labor conditions is well known to you. They are to be found right in your own territory without a doubt. They are outstandingly clear all over the United States. You need only to look about to find the operation of the union, and the threats and the menace that exists.

Mr. CLARK. I am not asking you anything about that at all, sir.

Mr. AVERY. Let me go ahead because I am on my way to answering the question.

Mr. CLARK. I probably have not made my question clear.

Mr. AVERY. I am not trying to evade answering your question.

Mr. CLARK. Can you draw a line between essential and nonessential industry in this country now and have some Federal agency maintain a semblance of order and protection on one side of the line and let the other side go without control?

Mr. AVERY. Congress drew the line and we have been trying to draw it, but we have been drawing here into something that does nothing but conclusively advances the results of dictatorship. You have it in your lap, sir, and the truth is here that you cannot escape. We do believe all these things—

Mr. CLARK (interposing). Don't you think, Mr. Avery—

Mr. AVERY (interposing). Let me answer the question the way I would surmise you mean to have me answer it. I do believe it is utterly impossible, when we are feeding the nations of the world that we must feed, and the difficulties that we will experience, the same as when years ago in the first war we ran into the difficulties for supplying food for the world. I think the supply and demand is the thing that controls us one way or the other, even up to the black market—we do not seem to escape it. I think those things should be put under the strictest control, sir. I think the meat industry should be put under Government supervision, and they should be held down in their service to a decent use of their facilities for a minor but satisfactory return in their war effort, for the common good. Everybody believes that. Is that the point you make?

Mr. CLARK. I cannot say that it is, frankly.

Mr. AVERY. You said I was smart, but I think I am stupid.

Mr. CLARK. That may be on this side of the counter, you can't tell.

Mr. AVERY. I think not.

Mr. CLARK. It seems to be conceded everywhere that in order to maintain production, keep down strikes in what we call war industries, mining, aircraft, and things of that kind, that the Government should go ahead to the point of seizing the property to maintain peace and production.

Now, do you think anything similar to that should be done to what is not strictly war production or should we let it go? That is what I am getting at.

Mr. AVERY. You can easily pass a law that would bring that about. I was trying to say in an industry that I know a little about, the meat-packing industry here, that your management must be left in those who are trained, who are skilled and well-informed, and the supervision of the Government could be a good deal more cooperative and more intelligent than it is. The principle, yes, the purpose here has been to do that, but Congress has not done very much of that

and it has done it very hastily and very badly, if I may be permitted to say it.

Mr. CLARK. I am inclined to agree with you on that, but suppose we amended the act—

Mr. AVERY (interposing). We do not have to have seizure to do these things, not of a grocery store or dry goods store, something of that kind, and the almost sheer pretense is illegal.

Mr. CLARK. What would you suggest in place of seizure?

Mr. AVERY. That is a matter that I think would belong to the Congress.

Mr. CLARK. Well, you say Congress ought to act. Now what ought it to do?

Mr. AVERY. I should say these laws that you have in mind are definitely required. They should be intelligently worked out in a problem that is, by its very nature, so subject to confusion that it is a part of the disaster of war that you have to let Government into business except for policing it. But I think it should be done, and it should not be left to the ability to put in these funny machines and to the appointment of people to them entirely without experience, many of them representing the public, particularly in our experience, knowing nothing of the realities we face but having a terrible prejudice that leads them almost unanimously to support any motion that is made in the War Labor Board by the unioners who have done a good job for themselves.

Mr. CLARK. That is an objection to the personnel of the War Labor Board.

Mr. AVERY. This War Labor Board?

Mr. CLARK. Yes.

Mr. AVERY. Why do you have the Congress make a thing legal that is standing now as ridiculous, as ineffective, and as a menace, when Congress could give actual powers and actual clear-cut limitations but as liberal as the conditions may need?

Mr. CLARK. How would you suggest that Congress provide for the enforcement of the War Labor Board's orders?

Mr. AVERY. In the regular way of law enforcement.

Mr. CLARK. Now, Mr. Avery, do you think we would have gotten anywhere with 6,700 cases if they were all subject to court review?

Mr. AVERY. It is a question whether you would have gotten anywhere as you are.

Mr. CLARK. The record shows there has been 6,700 cases, all of which were adjusted finally with the exception of 18.

Mr. AVERY. If this machinery were effective, if the law were clear-cut, if politicians were kept out of it, and if we had an orderly conduct of this thing, these wretched troubles that have assailed the Nation would not have arisen at all. When there comes out of this situation something that affects the rights of ownership, which is an element, and instead of turning over the management, which the politicians are on their way of doing, the management and the controls under a bunch of union racketeers, if you can see that situation, it would give me the greatest pleasure to carry you back as my guest and let you live this thing in a mail-order house, in a place where we have thousands of people, and let you learn for yourself what the principles are, what we are trying to do, and what the C I O is doing to this institution, and has done for 4 years, with the most villainous—not one of you sitting on

the bench could have said, with the realities that are there—and I understand you are going to listen to some of those gentlemen tomorrow—you could not have said we were not in our rights. We have had the Government in the place.

We are through with having the complaints, with having the abuses or fearing union men. I pledge you my word that you have to fight to prevent some angry character that may get any position up there, particularly in these days. Nineteen thousand of our staff have gone to war, and I think twice as many have gone to higher-paid jobs than they can get in the retail trade. When you build up an organization of that kind, and then throw a union in on these inexperienced people and they have the single purpose of breaking down the machinery of the place by denouncing for 4 years the management and personnel in utter viciousness, I do not think you gentlemen who are living with it would think this is a satisfactory thing, and the War Labor Board that permits it is a satisfactory thing. Read the summary. That is, in a few words, the same thing.

Mr. Ball suggests to me if there had been 6,700 strikes settled, or whatever the number is, how in the world do we have so many, and why is it, with all the generosity of the administration and all these wage-and-hour things, and these terrible things that are taking place, when we are in this severe financial stress, why is it that we are having daily more and more and more strikes?

Mr. CLARK. Well, there has been some testimony about that here. I have considered that. I agree with you that is a very grave situation but if we do not have some agency set up to cope with that very situation similar to the War Labor Board, don't you think it may be calculated to become more dangerous?

Mr. AVERY. Congressman, I wish to declare—understanding now better what you say—that these instruments that have been formulated with these purposes have been created under wrong principles and kept under political control. Their appointees have been bad; the standards that they have established are unfair, and they hold in contempt those with whom they deal, and they should be destroyed. In their place, with the same purpose in view, we should have a legal requirement. We should have the powers of appointment carried through as it is done in most of the things that require intelligence and integrity. That would be greatly to the service of our Nation, and I do not believe there is a corporation in the United States that would not stand and welcome that. But if this is to be the time in which, contrary to the suggestions of all the representatives that the President gathered about him representing industry, if in spite of their advice he insists on making a political issue out of it and putting out the wage rates in the way anybody can read, and the hourly rates, to advance unionism until it has become so obviously a political machine, then certainly we are in a desperate state.

Mr. CLARK. I would like to ask you something further. You spoke of the trouble we are having, the strikes we are having. May I inquire of you how the situation looks in Chicago now?

Mr. AVERY. You mean in our plant?

Mr. CLARK. No, I mean in that area.

Mr. AVERY. In the area? We read in the papers, Congressman, that Chicago is in all the country, to most, busy with the greatest shortage of people, and that is our own case. Under those conditions

and with these ideas that have been taken on through the unionizing, why, you can expect in that circumstance that these demands and strikes, and so forth, will develop. Supply and demand creates that.

Mr. CLARK. Is Chicago a congested area of war production?

Mr. AVERY. Yes, indeed; greatly so, sir. It is generally a wide area. I think it is probably the largest in the country. I am not sure of that, but my impression is that as a manufacturing facility, Chicago is a great center for steel and all the things that come from steel; Pullman is there. It is a great center. While in the other parts of the country they have places that are used for the construction of war implements, the availability, the location, the tracks, the whole situation of Chicago, greater Chicago, has compelled more and more the creation of economy and efficiency than any other place.

A strike in our staff, as Mr. Ball made perfectly clear, was more remote than in any of the staffs that we are inquiring into. I think we have between 70 and 80 percent of our staff women at the present time, and a great part of that staff, Congressman, are people that we are getting from the high schools.

Mr. CLARK. When you have a bad touch-and-go strike in your plant in Chicago, don't you think there would be danger of that spreading in Chicago?

Mr. AVERY. We do not have any such thing as that. What we have is bad action by an angry union who wants to dominate us, who wants to keep us from rejecting the closed shop.

Mr. CLARK. Don't you think there would be danger of that spreading into the Chicago area until there would be a grave danger of its materially interfering with war production?

Mr. AVERY. What did you say, sir?

Mr. CLARK. Do you not think there would be a danger of a strike like this spreading into the Chicago area until there would be a grave danger of its materially interfering with war production?

Mr. AVERY. I would like to answer the question the other way. It is my firm personal belief, which I cannot prove, that this strike came on not for anything except the machined purpose.

Mr. CLARK. Mr. Avery, if you will pardon me, sir, I am not asking you that, I am asking about the likely effect of the strike on the Chicago area.

Mr. AVERY. The unioner and the Government brought on the strike.

Mr. CLARK. Conceding that if you want to, anyway you want to do that, what I am asking you is if in your candid judgment there would not be serious danger in that community pulsating with labor difficulties and war production difficulties, the danger of that strike spreading so as to materially interfere with the war effort?

Mr. AVERY. I have been handed this statement:

The War Labor Board and the Attorney General have sought to justify the seizure of Ward's property by claiming that the Nation was in peril because of the strike. This is sheer hypocrisy. That is a fake. They have claimed that the strike at Ward's was about to spread to other locations and to other businesses. The truth is that the strike was nearly over before the President took any action. The Teamsters' Union had already decided not to observe the C. I. O. picket line. The truckers and the railroads were serving Ward's. The use of force and violence in the picket line by the union had been restrained by the courts. Fewer employees remained away from work each day the strike continued. Not the Nation, but the union which for years had refused to contract with Ward's unless Ward's agreed to surrender the liberties of its employees, was in peril.

Not a single customer's order was unfilled in that situation, sir. Our retail store stood open all the time.

Mr. CLARK. I am waiting for you to go ahead and say what you please now, but I do not consider that an answer to my question. I was asking you—and I do that in all friendliness—

Mr. AVERY. Yes.

Mr. CLARK. I am asking you for your opinion as to whether, under the conditions that you, yourself, have described in the Chicago area, there was not danger of that strike spreading.

Mr. AVERY. Not a scintilla. I suppose I am not taking it in, because it does not occur to me that you could have been asking that. You could come to Chicago and find out what a whipped-up and pretentious thing this is. I imagine that this is very much what this respectful committee is anxious to get. On my part, I am not trying to put up a defensive thing. I think in my vigor I am speaking too broadly. I do not mean to be impertinent, I do not mean to be offensive, I am only trying to be frank and to simply illustrate what I believe about this, and as a patriotic citizen, I want to call your attention to this summary, to show you what is going on with this terrible machinery. You, the Congress, should give us clear-cut and straight laws and take away from us this thing that has violated us for years.

I understand that we are the only retail establishment that has been put under any of the kind of things that we are put under. I think you are familiar with the fact that just as this thing was coming on, when we had been taken on, 10 days before the Board, the War Labor Board, decided that Sears, Roebuck, in the same town, is not of the character of institution that can be moved on and taken on without justification.

Mr. CLARK. We had both catalogs up here, Mr. Avery.

Mr. AVERY. The catalog would not do you any good.

Mr. CLARK. Mr. Avery, I think you are getting along splendidly, sir, if you will permit me to say so, but I want to ask you a little more without taking too much time. I did want to ask you a little about what occurred at Chicago when you went out and the Secretary of Commerce went in.

Mr. AVERY. Oh, yes. You mean at the time of the seizure?

Mr. CLARK. At the time of the seizure.

Mr. AVERY. You would like to have me describe that, do you mean?

Mr. CLARK. Yes, sir.

Mr. AVERY. I know Mr. Wayne Taylor slightly, but he was never an intimate friend, he was a much younger man and a very pleasant gentleman. He and Mr. Carusi, after some announcement, appeared at the office building and came to my office. They submitted to me a noticeably voluminous bunch of papers, the first one being a beribboned, signed, sealed, and delivered type of thing from the President himself, and then down from that instructions went in in increasing volume, down some little distance. I read the thing and then had them read some parts, and it was not necessary to take any more than a paragraph before it was clear what these instructions indicated was that these were only the details of the main instrument, which was the taking over of Montgomery Ward. I explained politely and in a friendly way—and the whole relationship from beginning to end was

without anger—that we did not recognize that they had any authority; we did not recognize any authority because I knew they did not have any authority.

I know the methods by which they would get authority, and I have been well supported by these gentlemen who have made it their business to be acquainted with that [indicating Mr. Barr and Mr. Ball], and others; and so I took the simple position, sir, that as I have been for 12 years, in accordance with the S. E. C., strictly elected by the stockholders, who have elected the directors and who have made me the chief executive officer of that corporation, I had the responsibility on my shoulders of defending that property.

I was requested by an unauthorized agency, plainly unauthorized, and as I looked them over I knew that they realized it themselves, and the general country itself knows there was no authorization, so I said, "You have no authority. I am the chief executive officer with great responsibility, and I shall not give up this corporation."

Now, then, there is no need to repeat that, but in a succession of things during the first 3 days we had, first, marshals that were to give the power that was necessary, and following that we had, very late in the afternoon, some 40 soldiers that had been ordered in and for which we waited. I think we stayed there until 6 o'clock. Those people came up and they again, like the marshals, made the demand that by force they were going to take over the property. I repeated just what I said to you. I took the same position and stood upon it. When the time had gotten to be 6:20 I said, "Is there anything further that you want to do, that you are to put me out of here, or anything of that kind?"

The lieutenant, who had been directed and could not remember what his directions were, said he was going to move, I think, but immediately that was repudiated by Mr. Taylor who sat on the other side and said, "No, that is not to be done." And, as I recall it, the lieutenant then quite pleasantly changed it and said, "No, that is not to be done." It was a military thing, as you can see. I said, "Is there anything further that may be done in the situation at this time?" That is the time the day was over. Nothing was done. I said, "In that case, I wish you a very good night." And I left.

There were only 60 photographers and newspapermen packing a very large vestibule—it must be 50 feet long and 30 feet wide, perhaps. So I stepped into an anteroom where my hat hangs, and as I got there it occurred to me to go through that mob would not be very satisfactory. I had no realization that during the day at short intervals the radio had been heralding these marvelous military operations around there. This is the eighth floor of a large administration building, a large office building. I found the stair in the middle of the building just back a little way, and I went without seeing a soul down to the second floor. There I thought I could run without interruption to the front, and I found that entirely open, and I descended to the very front of the building, down to the vestibule in front of the elevators, and there was quite a mob. My chauffeur was there waiting for me and I followed him and two Chicago policemen who evidently were waiting, and they formed a Rugby V—I do not mean the modern Rugby, I mean the old-fashioned Rugby—and they plowed through this thick mob, and I was there with this little chauffeur, back in the eddy quite comfortably, with people and photographers to a degree

that I never heard of in the world coming from all sides. Through this mob I got into the car, took the wheel, and slowly ran out of there and I was followed by 3 cars of photographers.

I went to my apartment, which is a mile or so away. I read very quickly that we had not given up the ship. Of course, there is nothing so clear than that the political flavor of a paper depends upon the report you get on a matter of this kind. Those who were of my persuasion—and I suppose I am a pretty black Republican—heralded the situation in a manner more or less favorable to the company's position; the others did what they could to make it appear that there had been a surrender. There was none, but that went disagreeably all over the place, and I think it had some effect upon my decision when the next morning I learned that by plane the Attorney General had arrived and was at the office very early in the morning. I delayed my own arrival and came into my own office which this staff was then using. They politely, on my entrance, got out of my chair and moved to the front. I hung up my hat.

Mr. Biddle said "Good morning" to me, as I came through the door. I said, "I recognize you, sir, by your photographs," which was an easy thing to do. I then sat down at the desk, and said, "Gentlemen, what can I do for you?" I did that in a very dominant manner, because I was dominant in those circumstances because I was right.

The thing progressed very rapidly from one situation to the other, and the persuasion was that I give it up, that I would cooperate, that I would concede, and I met that by making a repetition of the same statement, that they were without authority; that I had the responsibility and I should not give it up.

To cut out those incidents, the soldiers came in with bayonets fixed, no question about it, with the hard iron hats on their heads, and then the Attorney General said, "Mr. Avery, you are the only man in the United States who has acted this way. Everybody has conceded and cooperated. I would advise you"—at which I said, holding my hand out in much the same index manner that the Attorney General had—"I want none of your damned advice. I shall not move a step." They said, "What are you waiting for? Throw him out." That was not Mr. Taylor, as the situation I suppose would be more comfortable if it was, it was the Attorney General of the United States, Mr. Biddle. With that they were put behind my chair, and following out the same fear I had before, that I might be misinterpreted if I cooperated with them, I said, "I shall not move an inch," and they said, "Lift him out of the chair." Who said that, I do not remember, but I think it was Biddle. In that pleasant situation, which I am sure everybody in the world has seen to a sickening degree, I rode out and down.

When I got to the elevator they put me on my feet, because I weigh 180, pretty nearly 190, and the elevator before which we stood was one of four. One of these gentlemen who had this burden, or the one who was directing them, said, "Mr. Avery, you just walk down to the elevator" which, at the other end, had come up, and to which I said, following him too rigidly, perhaps, "I shall not move an inch." So, I was a little more vigorously hoisted in that position in which the photographer saw me. I went down in the elevator, out in front. This was in the morning, perhaps 10:30, and from nowhere sprung something like a thousand photographers, and with

that popping target they put me to the curb, and I got on my feet, and the photographers were still working when I got in my car and went out.

There was an injunction put upon 15 of us to keep us from interfering with the corporation. The top 15 officers were in that matter, as they interpreted it, prevented from going to their work. In any case they were out and they were out until the lawsuit.

In the meantime there were the arguments going on before Judge Holly in the court when one night at 7 o'clock I was handed a letter that Mr. Goodloe had delivered in my absence, and the announcement was made that the plant had been returned, that we would not again be thrown out of the courts. We were in charge of the corporation and now we needed only to have this voting that for 5 or 6 months we had been praying to get to settle whether or not we had legal authority to negotiate with these people.

Mr. CLARK. Now, at the time of the incident that you just described did you not know that if you yielded possession pursuant to the demand of the marshals under an Executive order of the President—

Mr. AVERY (interposing). They made utterly no demand. They made nothing; they just came and sat around.

Mr. CLARK. Did not ask you to vacate the premises?

Mr. AVERY. No, sir.

Mr. CLARK. Did not ask you to surrender the premises?

Mr. AVERY. Not one minute.

Mr. BALL. May I say both Mr. Barr and myself were there and we verify that statement.

Mr. AVERY. Then, they sent for the soldiers. They seemed to feel the inadequacy of these pleasant people as they came in, the marshal first and, I think, nine little marshals after him.

Mr. CLARK. Well, you did know if you had surrendered in response to demand for possession under an Executive order that—

Mr. AVERY (interposing). I was not certain, and I wanted no doubt on that, through the experience that I had the night before, Congressman, that I did not want to give up. It was my impression that most of the people, like it was in unionism, faced the utter legality of the game, and they have all succumbed, as you have seen almost every corporation in the United States has done. Do you think, sir, that Ford likes unionism? Do you think General Motors does? Oh, no, but they are under some of this pressure here that must be taken into consideration.

I did not wish to have any doubt in my mind, and if my acting in accord was a danger and I had no opportunity of making any inquiry, I would make them carry me out. Thank Heaven, I did that. Because the damned photograph resulted and the public was awakened to some of the realities of the situation.

Mr. CLARK. You did not anticipate anything like that?

Mr. AVERY. I should say not; no, sir.

Mr. CLARK. Was what you did, the course that you pursued there, directed or approved by the board of directors of your company?

Mr. AVERY. Do you mean the willingness with which that was done, Congressman?

Mr. CLARK. I am talking about this particular thing.

Mr. AVERY. Oh, they did not have any—what particular thing?

Mr. CLARK. I am talking about the course you pursued at the time of the seizure that you have just detailed. I am asking you whether that was directed or approved by the board of directors.

Mr. AVERY. The answer is "Yes."

Mr. CLARK. You had at that time been advised, had you not, that Congress had passed a law which authorized the War Labor Board to make orders in these labor disputes and which provided that those orders should be put into effect until the further order of the Board?

Mr. AVERY. Well, I am now repeating what Mr. Barr said. My answer perhaps should be on his advice "Yes," but the Government had not followed that law.

Mr. CLARK. But you knew that was the law? You were so advised?

Mr. AVERY. Were you referring to section 7?

Mr. CLARK. Yes, sir.

Mr. AVERY. I am familiar with the law.

The CHAIRMAN. The chairman would like to make this statement with reference to the testimony about the employees of the trucking company, reference to which has been made by one of the witnesses, to the effect that they were not under oath to the Post Office Department. That statement is correct.

The chairman was advised last Friday by Mr. Cargill of the Post Office Department after his return from a trip to Chicago to that effect. At my direction, he put the facts in a letter to this committee, to me as chairman of the committee, which I will read if the committee wants me to read it, or just put it in the record.

Mr. CLARK. You might as well read it.

The CHAIRMAN. The letter is as follows [reading]:

POST OFFICE DEPARTMENT,
FIRST ASSISTANT POSTMASTER GENERAL,
Washington, D. C., June 5, 1944.

HON. ROBERT RAMSPECK,
Chairman, Committee to Investigate Montgomery Ward Co. Seizure,
House of Representatives, Washington, D. C.

MY DEAR SIR: During my testimony before your committee on May 25, 1944, statements were made from my information and belief that oaths of office of truck drivers of the contractor for Montgomery Ward & Co. were on file at the Chicago, Ill., post office. At that time I had no reason to doubt the Chicago post office had not followed section 30, Postal Laws and Regulations, the pertinent part reading:

"NOTE.—Mail contractors, subcontractors, carriers, mail messengers, assistant mail messengers, and other persons concerned in the transportation of the mails, except employees of railroads and steamboats, must take the special oath prescribed by 5 United States Code 365."

I visited Chicago on May 26, 1944, and to my surprise was advised the oath forms were not on file. A letter of explanation from the postmaster reads:

"In response to an inquiry from Mr. Tom C. Cargill when he visited this office on May 26, 1944, I wish to advise that we do not have on file the oath of office for drivers of Motor Express Co., recognized contractor of Montgomery Ward & Co.

"This omission was due to the fact that at the time the Motor Express Co. began this service we were agreeable to have them serve as the concern is responsible and as they have a large fleet of trucks and a large number of drivers we found it impracticable to have individual drivers complete the forms.

"We sincerely regret that the Post Office Department was not advised of our failure in this instance but wish to assure you the matter will be given appropriate attention and that our files will be maintained in proper order in future."

I hasten to bring this correction to your attention for the information of the committee.

Sincerely yours,

TOM C. CARGILL,
Deputy First Assistant Postmaster General.

Attached to it is a letter from the postmaster at Chicago addressed to the First Assistant Postmaster General, from which I have already quoted.

Mr. AVERY. We would hope that all of the misstatements in the testimony will be similarly treated.

The CHAIRMAN. The only thing the chairman wants to say in that respect is that that is the reply of the Post Office Department and that they acted promptly and advisedly as soon as they found they made a mistake.

The committee will take a recess until 2 o'clock.

(Whereupon, at 12:30 p. m. the committee recessed until 2 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 2:15 p. m.)

The CHAIRMAN. The meeting will come to order, please. We will continue with the cross-examination of Mr. Avery.

Mr. Dewey?

Mr. DEWEY. Mr. Avery, I have one or two points that were brought out in the questioning of my colleague, Mr. Clark, this morning. One was the use of the mail service of the country as representing some sort of a particular type of governmental service extended to mail-order houses that would be unusual to other lines of trade in industry.

If I am not mistaken, there are a number of classifications of postal service to take care of catalogs, advertisements, parcels, and other matters of that type that are sent by mail and have been developed over the years to offer a service on the part of the Government to the business of the country.

I would like to have some expression from you on that.

Mr. AVERY. What would the question be?

Mr. DEWEY. Well, the question would be, Do you think that the postal service, as rendered to a mail-order house, shows any particular type of special favor toward that line of business over any other business?

Mr. AVERY. Not at all. It is available to everybody, and they ship from any point with the same advantage. The mail-order houses use it, but so does Marshall Field in Chicago along with the others. The retail stores, of course, when they ship quantities, find the economy of the carload or less-than-carload way.

If I understood your question, everybody uses parcel post.

Mr. DEWEY. I have two other questions, one of which was covered at some length by Mr. Clark in his questioning and that is the matter of differentiation between war industry and, you might call, the services to the civilian public, if there was any difference between those two.

Now, I am going to cite one case that was brought up here that I think shows that in the mind of the Congress there is a difference, and that pertains to the price control bill. At that time, rent control was under consideration.

In the rent control bill there was an item entered that the Director of Rent Control might decide upon the use and occupancy of dwellings. That was at a time when there was an acute shortage of housing for defense workers but, nevertheless, the Congress decided that they would strike that item out of the bill which would permit the rent control administrator to assign war workers to private dwellings, even

at the time of an emergency. I want to put that statement into the record, because I do believe that one of the considerations we must have here is that division which has narrowed down under the so-called Smith-Connally bill to certain mines and others mentioned here—plants, mines, and facilities, and other operations for the general public.

Now, the third point I wish to ask your opinion on. The basic law, the so-called Wagner Act, was passed in July 1935. There have been 9 years of experience with it, and probably the first 2 are not greatly considered in court tests, but there have been 6 or 7 years of operation under the Wagner Act.

During the latter 2 or 3 years, we have had exceptional conditions with war production, exceptional not only to labor, but exceptional to management. You, in your responses, said that you thought that the Smith-Connally Act probably had been written hastily and was not quite clear.

I think this committee—at least I as a member of it—are hoping that out of this hearing we can enter something into the record that would be constructive for the labor-management situation.

Do you think anything could be done, or that now would be the time to do it, to have some meeting under proper auspices in which management could choose their own representatives, and labor theirs, and study the so-called Wagner Act, the National Labor Relations Act, in the light of what has happened since it became law with the idea of making suggestions?

We are going to have to spend time with our returning soldiers in the matter of their placement in industry, and the retirement of workers from industry that are now there, and in view of all those facts, do you think anything would be gained by such a form of conference between management and labor to consider suggestions for the changes or for the betterments of the National Labor Relations Act?

Mr. AVERY. That would be dependent on the way that such a conference would work out. I don't know, and I wouldn't know enough from the description, Congressman, to venture that.

My impression is that the making of our laws in the normal way would be adequate, and that they could summon such experience and advice as is done in the building of bills.

The difficulties come, on many of these things, by the inexperienced people and the interpretations that have been strained into the condition.

Mr. DEWEY. Well, certainly management has had unusual experiences in the past 3 or 4 years. Don't you think that those experiences ought to be brought to the Congress in some sort of a form that would give us the benefit of management's and labor's experiences and suggestions for the future?

Mr. AVERY. Perhaps that would be the thing to do. The result that you would get from that might also be good. I don't know that I feel competent to say anything beyond the fact that there is a great need for reality to be recognized, the defects that those realities present, and then some method by which they may be eliminated. I wouldn't venture to advise, sir, how that could come about.

Mr. DEWEY. I wasn't suggesting advice in a way, but I was offering the question in the hope that with your experience you might suggest something or some thoughts as to how such a conference

would best be set up, whether instead of having them appointed, we might let them select themselves to come to some sort of a conference. We are making a great effort to set up laws for the reconversion of physical assets.

Mr. AVERY. There are so many times in which industry is supposed to act as a unit. The President has assumed that he would be able in his conferences to have somebody represent the public and another group of a dozen people or so represent industry. Your personal experience would teach you that in these associations of commerce, manufacturers' associations, there is the undying conviction that those groups have an entity and are representative and are in accord, and their great power is going to correct the difficulties that they all more or less assail.

The unhappy experience is that they have done very little, and it is quite well recognized by people who have looked to them in hoping for something of the kind that perhaps you have in mind. Then, after years of effort, they have discovered that they are a nonamalgamated group with leadership of great uncertainty, and too often a secretariat struggling to maintain justification for continuing the organization that exists.

That type of leadership has not been successful. It isn't successful now. I don't know what the answer is if it involves how will you summon the common judgment. There are many variations in it.

Mr. DEWEY. Well, we summoned one here.

Mr. AVERY. Perhaps the thing I have been saying, if I might continue a moment, would be that there is a great need for the determination of a better handling of the things we have discussed this morning, and that it would seem that instead of springing from an independent action unauthorized, as the President's group in the War Labor Board, that they should come legally into being, as a result of law that the governmental group that this body represents would furnish.

Just how that would be done I would be driven, through a lack of knowledge, to say in the normal way of making laws.

Mr. DEWEY. If I recall correctly, the Railroad Act was produced by two or three—I have forgotten which—officers of large railroads with two or three members that had had active experience in the railroad brotherhoods, and out of that was produced the Railroad Act, which I think was brought up by them before a congressional committee.

Mr. AVERY. I think it was totally abandoned and set aside by the President in his last use of it, wasn't it?

Mr. DEWEY. Well, when they took over the railroads recently.

Mr. AVERY. When that wage rate came up, the whole thing was tossed aside for some reason, and the President dictated the answer quite independent of the regulation. Am I right in that?

Mr. DEWEY. I think there was undoubtedly something like that. I know they took over the railroads at that time, but for a period at least that act has been in effect, and I think it was developed something along the lines of my statement. I was just seeking to know whether you could offer any suggestions.

Mr. AVERY. My observation was that that hasn't stood the test you aimed to meet. That is only one, of course, of many industries involved.

Mr. DEWEY. Yes. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Elston.

Mr. ELSTON. Mr. Avery, I only want to ask you a couple of questions.

Did either the mail-order house in Chicago or any of your other establishments in Chicago have any contracts with the Army or the Navy or any other agency of the Government at any time during the war?

Mr. AVERY. Mr. Ball has an explicit statement on that. Would you be willing to have him answer?

Mr. ELSTON. I will defer that until he testifies.

I have another question. Did there at any time come to your knowledge any information that if the employees in your Chicago establishment went on a strike, other employees in Chicago or elsewhere would carry on a sympathetic strike?

Mr. AVERY. None whatever.

Mr. ELSTON. A statement was made here that if there was not an orderly election in Chicago and the employees of your establishment should go on a strike, it would mean almost a collapse of the labor policy of this country. You don't concur in that statement, do you?

Mr. AVERY. I disagree with that totally.

Mr. ELSTON. Would it even result in a collapse of labor conditions in Chicago?

Mr. AVERY. I thought those statements were made in the desire of the union to create enough activity to preserve and make real a feeble strike that seemed without a justification. You understand that the wages in the place were determined by the Government, that the hours were determined by the Government, that the working conditions were as pleasant as could be found and were improving all the time. What then would they strike for?

Mr. ELSTON. At any rate, you had no information that any other strike was probable?

Mr. AVERY. None whatsoever, and the result of it didn't even succeed in interrupting our own performance.

Mr. ELSTON. Just one other question. Was there any customer during the time when this controversy was going on, or during the strike who sent in his order and who did not have his order filled?

Mr. AVERY. Not one.

Mr. ELSTON. That is all.

The CHAIRMAN. Mr. Curtis.

Mr. CURTIS. Mr. Chairman, I left temporarily to answer the roll call, so I may repeat here a little bit. If I do, just advise me of it.

Mr. Avery, when did the strike end officially?

Mr. AVERY. April 24, I was advised by Mr. Barr.

Mr. CURTIS. What day did the soldiers take possession of the Chicago property of Ward's?

Mr. AVERY. They first came in on the 26th, and they accomplished, in my opinion, the taking over on about the 27th, when I was carried out of the building.

Mr. CURTIS. What day did Mr. Taylor, representing the Secretary of Commerce, first appear at your Chicago office?

Mr. AVERY. On the 26th.

Mr. CURTIS. That was 2 days after the strike had officially ended?

Mr. AVERY. Yes; 2 days after. Whether it was officially ended, I don't know.

Mr. CURTIS. After it was called off; is that right?

Mr. AVERY. Mr. Ball said "yes."

Mr. CURTIS. I would like to ask this question directly.

On what basis do you say that the strike had ended on the 24th? What happened? What action was taken?

Mr. AVERY. Mr. Barr can give that answer as the labor manager.

Mr. BARR. Will you repeat the question, please? When did the strike end?

Mr. CURTIS. What action was taken to indicate that the strike was over?

Mr. BARR. At about noon on April 24, the union announced to the press that the strike would be called off at 10:45 that evening, that is, on the evening of April 24.

Mr. CURTIS. Now, at the time the strike was called off, had there been any demand to turn the properties over to the Government?

Mr. AVERY. The answer is no, sir.

Mr. CURTIS. Whatever interruptions of operations had existed during the strike, had been removed before the Federal Government demanded possession of the property?

Mr. AVERY. Quite effectively; yes.

Mr. CURTIS. Now, with reference to the operations of the Chicago properties during the strike, was the retail store open all during that time?

Mr. AVERY. Yes, sir; every day, fully, and without restriction.

Mr. CURTIS. Was the mail-order house open?

Mr. AVERY. Always open; yes, sir.

Mr. DEWEY. And your Schwinn warehouse?

Mr. AVERY. Always.

Mr. DEWEY. How about the other departments?

Mr. AVERY. All open.

Mr. DEWEY. How many of your employees were absent?

Mr. AVERY. I can't give you that. Do you know, Mr. Ball?

Mr. BALL. The answer would be something like this, if I may interject. Practically a hundred percent of the several thousand employees of the administration building were at work every day. Never less than 74 percent of the employees in the retail store were at work on any day. Never less than 42 percent of the employees in the mail-order house, that is the full-time employees, were at work any day. Each day of the strike in the mail-order house and the Schwinn warehouse and the store, the percentage of the employees at work had increased, and the general situation was that every day any difficulties caused by the strike lessened.

Mr. CURTIS. In other words, your first day of the strike was the most crippling?

Mr. BALL. That is right, sir.

Mr. CURTIS. And it progressively got better each day?

Mr. AVERY. Every day.

Mr. CURTIS. And on the 24th, your strike ended?

Mr. AVERY. Would you let Mr. Barr say that? He can give you the answer.

Mr. CURTIS. And on the 24th of April 1944, your strike ended?

Mr. BARR. Yes; the truckers came through the picket line beginning on the night of the 21st, and the union removed its picket line and announced the strike was called off on the 24th.

Mr. CURTIS. How did they announce that?

Mr. BARR. The first notice we had was from the press.

Mr. CURTIS. Did any Federal agency know that the strike was over?

Mr. BARR. We wouldn't know that, but it was in the papers, and anyone interested in it would know it from the press notice.

We had no relationship with any agency of the Federal Government during the strike, except the telegram from the President. The union announced, I believe it was on Monday, the 23d, that they were going to hold a meeting on the morning of the 24th, and announced that they would, in accordance with the President's request, call it off.

Mr. CURTIS. Now, assuming for the purpose of this question, that the Federal Government may have had a right to take possession of the plant because it was not in operation, that cause was removed 2 days before the exercise of that right?

Mr. BARR. The plant was in full operation prior to the seizure of the plant.

Mr. BALL. Prior to the order of seizure.

Mr. CURTIS. I notice in the prepared statement on page 8, part 1, the statement in reference to discharges from Ward's during the time of the labor troubles, and on the following page the statement that none of these discharged persons was reinstated by Government agencies when they took charge. Do you have records and figures to substantiate that?

Mr. BARR. Yes.

Mr. CURTIS. Will you give them to the committee?

Mr. BARR. Yes, sir.

During the period extending from December 1, 1943—8 days prior to the expiration of that old contract—down through April of 1944, 881 employees were discharged from these Chicago properties. During the previous year in the same period, that is, December 1942, through April 1943, 1,366 employees were discharged.

During the period while Mr. Taylor was in Chicago, he appointed Mr. Goodloe, an employee of the Department of Commerce, whom I believe appeared before the committee briefly, as grievance officer.

An announcement came out in the press to the effect that Mr. Goodloe, after some conversation with the union, had taken action to nullify the discharges which had occurred after Mr. Taylor's coming to Chicago, and that those folks would be reinstated.

Following that announcement in the press, several former employees reappeared for their jobs, six or eight of them at least. Mr. Goodloe, in the meantime, had asked the company for a statement of the reasons for the discharge of these people, saying that the union had made some complaint about them, and after Mr. Goodloe—acting for Mr. Taylor—investigated those facts, he did not reinstate a single employee, and no employee which Ward's had discharged in the normal operations of its business was put back to work, and neither Mr. Taylor nor Mr. Goodloe requested the company or any of its representatives to reinstate any of those employees.

Mr. CURTIS. What was the date when the postal employees were removed from Ward's in Chicago?

Mr. BARR. April 13, the second day of the strike.

Mr. CURTIS. Approximately how many were removed?

Mr. BARR. On the 13th, as stated in Mr. Higgins' affidavit, which I filed with the committee, there were 53 regular post-office clerks, 18 substitute post-office clerks, and 2 laborers on duty in the post-office distributing unit in the mail-order house. During the morning, at about 10:15, all of those employees, with the exception of the supervisor, and 3 of the clerks, were instructed to discontinue their activities in that unit and return to the post office.

Mr. CURTIS. Now, was there work to be done by those postal employees, had they come to work that morning?

Mr. BARR. Yes, there was. Each day of the strike, that is, that day and each subsequent day, there was work to be done, and Mr. Higgins, in his affidavit, has set forth the figures showing the volume of the mail which was handled by Ward's own employees during that period.

Mr. CURTIS. How did the volume of mail that should have been handled during that period compare with the normal or expected mail for that period of a year that was to be handled?

Mr. BARR. Well, the volume of mail during this period was substantial, as indicated by the number of thousands of sacks and outside pieces of mail which were handled each day.

Mr. CURTIS. From your knowledge of the company, would you say that the postal employees were in idleness before they were removed?

Mr. BARR. They were not.

Mr. CURTIS. Now, a question or two about this plant of Ward's which is not located in Chicago, but is engaged in manufacturing.

You refer to the Hummer Manufacturing Co.

Mr. AVERY. Hummer, at Springfield, Ill., sir.

Mr. CURTIS. And they do have some war contracts now?

Mr. AVERY. Yes; they have been making small parts for manufacturers with contracts with the Government. We have none direct.

Mr. CURTIS. Are those war contracts by Hummer handled directly between Hummer and the Government?

Mr. AVERY. The answer is "Yes."

Mr. CURTIS. Now, so far as your labor arrangement at Hummer and your labor arrangement at Ward's is concerned, has it ever been the same contract?

Mr. AVERY. No, sir.

Mr. CURTIS. Has the same representative represented the employees?

Mr. AVERY. I think that is a labor relation question.

Mr. BARR. No; it never has been the same. The employees at Hummer—that is, those employees at Hummer who are represented by the union—are in the International Association of Machinists, an affiliate of the A. F. of L.

The Chicago union is a C. I. O. retail store and mail-order house union. There has never been any connection or any indication of any connection or collaboration of any sort between those two organizations. The employees at Hummer were organized into this machinists' union before any of the employees at Chicago were organized into a union.

The company signed a contract at Hummer with the machinists' union in March of 1941, a written contract, which left the employees at that plant entirely free to join the union or not to join the union as they liked.

Mr. CURTIS. I am not particularly interested in the labor relations at Hummer. Here is what I want the record to show: The Hummer Manufacturing Co. could carry on its job with the Government producing weapons of war regardless of what happened at the Ward plants in Chicago?

Mr. BARR. Absolutely. There is no operating connection with those two properties. The Hummer property is engaged solely in a manufacturing process. In normal times, some of the products which it manufactures are sold to the company's retail outlets throughout the United States, and others are sold to the general public. The Hummer factory is operated as a wholly independent and separate operating branch, separate records are maintained, and there is no interchange of employees between the two. The nature of the business is entirely different and separate.

Mr. CURTIS. Now, referring to part 1 of the statement, page 10, the statement is made, and I quote:

The fact is that Ward stated to the union when the representation question first arose, that Ward's was willing to have the issue determined by either an election or by a check of the union's membership cards against the pay roll.

When and where and to whom did Ward's advise the union that they could check their membership cards against the pay roll?

Mr. BARR. I am the person who advised them in that, and I advised the union representatives of that fact on the evening of November 16, at the time we held a joint meeting between the union representatives and the company representatives, for the purpose of negotiations.

Mr. CURTIS. Did you ever make any memorandum or write a letter which could serve as a memorandum verifying that statement to any person?

Mr. BARR. On the following day, I wrote a letter to the union setting forth in some detail the position which the company had taken with respect to these negotiations. That letter was dated November 18.

Mr. CURTIS. Who was that letter to?

Mr. BARR. That letter was to the United Mail Order Warehouse and so forth union—the one we were dealing with in Chicago—addressed to the attention of Mr. Anderson, its president.

Mr. CURTIS. In that letter you made reference to the company's position?

Mr. BARR. In that letter I stated to the union:

The company stands ready to bargain with your union with respect to these two units, or either of them, whenever you show that you are authorized by a majority of the employees in the respective units to represent them in collective bargaining.

In the letter I did not venture to specify any particular method by which that determination could be made. However, at the meeting which was held on the 16th, when we orally discussed the matter—

Mr. CURTIS (interposing). The 16th of what?

Mr. BARR. The 16th of November 1943. I stated to the union that either the election or a check of the membership cards would be satisfactory to the company.

Mr. CURTIS. Did you ever advise the National Labor Relations Board that you had extended this offer to the union?

Mr. BARR. Yes, sir.

Mr. CURTIS. What date was that?

Mr. BARR. First on January 27, 1944, I wrote a letter to the National Labor Relations Board in which I said, and I will just read this as it is a short letter:

On November 16, 1943, United Mail Order Warehouse and Retail Employees Union requested to bargain with Ward's on behalf of the employees in seven bargaining units at Chicago.

Ward's recognized the union and stood ready to bargain with respect to five of these units, but questioned the union's representative status in the remaining two units, namely, the mail-order house and a retail store unit.

Ward's offered to have this issue decided either by a card check against the pay roll, or by an election to be held under the auspices of your office. The union failed to take either of these steps, but instead appealed to the National War Labor Board.

I then went on to inform the National Labor Relations Board that Ward's had no objection to their deciding that question. That was followed by another letter to the National Labor Relations Board written by me under date of March 6, 1944, and a quotation from that letter is set forth at the top of page 11 of part 1 of our statement, in which I again made it clear to that Board that, "As previously stated, we have no objection to the Board's making its determination by either method," having previously referred to a check of cards, or an election.

Mr. CURTIS. And all through these months from November on, you publicly and repeatedly asked for an election?

Mr. BARR. That is right.

Mr. CURTIS. What, if anything, did the Secretary of Commerce do in addition to running the business or attempting to during the time the Government had possession of it?

Mr. AVERY. I don't know of a pleasant way to say that he did nothing.

Mr. CURTIS. Did they hold an election during that time?

Mr. AVERY. No, sir.

Mr. CURTIS. During the time the Government was in possession?

Mr. AVERY. Yes; they held that election, and the moment that election was over they turned the property over to us.

Mr. BARR. But the Secretary of Commerce, Mr. Taylor, had nothing to do with the holding of the election. He participated in that in no way, and contributed to it in no way.

Mr. CURTIS. That election occurred during his possession?

Mr. BARR. On the last day of his possession that election occurred.

Mr. CURTIS. Mr. Avery, referring to your statement about returning to your office the day you were ejected from the building, how large an office is that?

Mr. AVERY. You mean the size of the office itself?

Mr. CURTIS. Yes; your individual office.

Mr. AVERY. Oh, I should say it was 20 by 30. It is a large office, suitable for directors' meetings.

Mr. CURTIS. How many soldiers were in there?

Mr. AVERY. In the room itself—I think there were others in adjoining rooms—on one occasion there were three, and on another there were five, I am told by Mr. Ball and Mr. Barr who are with me.

Mr. CURTIS. Were they armed?

Mr. AVERY. Yes.

Mr. CURTIS. How?

Mr. AVERY. With carbines and with bayonets fixed, and they had their battle dress.

Mr. CURTIS. What do you mean by "bayonets fixed"?

Mr. AVERY. I mean bayonets attached to the ends of the rifles for use. Fixed bayonets is a definite military term, as you know.

Mr. CURTIS. And they were present with their fixed bayonets at the time Mr. Biddle made his order?

Mr. AVERY. Not only that, but they stood at the position of "charge."

Mr. CURTIS. They were in no sense at rest?

Mr. AVERY. Not a bit; no, sir.

Mr. CURTIS. Facing you, I take it.

Mr. AVERY. Yes; on two sides.

Mr. CURTIS. And amid such an arrangement, what was it Mr. Biddle said?

Mr. AVERY. Do you mean at the last?

Mr. CURTIS. What was his final order?

Mr. AVERY. His final order was, "Well, what are you waiting for? Throw him out."

Mr. CURTIS. Referring to you?

Mr. AVERY. I am perhaps more delicate than he was, but that was the sense of his indignation and direction.

Mr. CURTIS. Did he say it angrily?

Mr. AVERY. Yes, sir. Would you say so?

Mr. BARR. Yes.

Mr. BALL. Very.

Mr. CURTIS. Mr. Chairman, I have no further questions at present, but I would like to reserve my right to question some later witnesses.

The CHAIRMAN. Mr. Monroney.

Mr. MONRONEY. I have no questions at present.

The CHAIRMAN. Mr. Avery, we have been pretty lax about this business of letting other people do the testifying.

Now, I am going to ask you some questions, and I want you to answer them. I don't mind your consulting with your associates, but I want them to be your answers.

Mr. AVERY. Yes, sir; they all are.

The CHAIRMAN. Do I understand you take the position that you were not in any way bound by the agreement which was reached by the conference representing industry and labor in Washington shortly after Pearl Harbor?

Mr. AVERY. My impression is that that bound no one.

The CHAIRMAN. You don't consider yourself bound by any agreement they reached?

Mr. AVERY. No, sir. I should say perhaps, there was no agreement reached on the subject of our dispute as to a closed shop. The industry members rejected that and advised the President to leave that emotionally dangerous thing alone.

The CHAIRMAN. I think that is correct. They didn't reach any agreement of that?

Mr. AVERY. No, sir.

The CHAIRMAN. But I wouldn't agree with your statement that they advised them to leave that alone.

Mr. AVERY. Would you like to hear the words?

The CHAIRMAN. Do you think you could settle labor controversies and leave that out of the settlement?

Mr. AVERY. Do I think I could settle?

The CHAIRMAN. You, or anybody else.

Mr. AVERY. And leave out what?

The CHAIRMAN. The question of what sort of a union contract you are going to have?

Mr. AVERY. That is the subject of one discussion, of course.

The CHAIRMAN. But do you think you could settle many of the controversies if you disregarded the question of whether you should have a closed shop or a union shop or some sort of other union organization?

Mr. AVERY. I would like to answer that in several ways. One is that if it were to be understood what the Government's attitude was to that dominant difficulty, it could easily be done, and that was the essence of the suggestion directed to the President. He disregarded that.

The CHAIRMAN. You have had a lot of experience in business, Mr. Avery, over a period of many years, have you not?

Mr. AVERY. Yes; since my youth.

The CHAIRMAN. You have dealt with a lot of unions, have you not?

Mr. AVERY. Yes.

The CHAIRMAN. You have made contracts with them, have you not?

Mr. AVERY. Yes, sir.

The CHAIRMAN. Hasn't every contract you have ever made had some reference to the question of whether or not there should be a closed shop or a union shop or maintenance of membership, or some other form of union organization?

Mr. AVERY. I should say, without straining my memory too definitely, that all of those things, with a minor exception, have been quite free of the closed shop, and it is easy to have them without the closed-shop relation.

The CHAIRMAN. That is not an answer to my question, Mr. Avery, and I want to be perfectly frank with you, and I want you to be frank with me.

Mr. AVERY. You will have no trouble that way, sir, as I will be frank.

The CHAIRMAN. I asked you whether or not in these settlements you made with the unions, the question came up?

Mr. AVERY. I am trying to convey that the question rarely came up because it wasn't the habit and hasn't been the habit of any concern I have been associated with to make closed-shop relations.

The CHAIRMAN. All right. You have never signed a closed-shop agreement?

Mr. AVERY. I would not go so far as that, Congressman. My period in business covers a longer period than my memory may encompass, and I do not individually answer all of these things. In general, frankly and fairly, the closed shop has been excluded from our relationships, and with very little difficulty.

The CHAIRMAN. The question I asked you—and I haven't yet gotten an answer, Mr. Avery, with all due respect to you—is this: Didn't that question, the question of what sort of a union you were going to have, come up in every case?

Mr. AVERY. I would say "No," sir; but that wouldn't include all cases, because I would call your attention to the fact that my early experience was in a mining company, the United States Gypsum Co., and for many years those negotiations handled by the operating department quite exceed my recollection. But the question of the closed shop, I should say, existed very probably in one Fort Dodge relationship that we had, and possibly others. But generally, no closed shop, sir.

The CHAIRMAN. Didn't the union in all cases ask for either a closed shop or a union shop?

Mr. AVERY. Not in all cases.

The CHAIRMAN. In what percentage of them?

Mr. AVERY. That I wouldn't be able to say, but I think generally, in such union relations as we had, which were not many, it was a minor percentage. I hesitate to say that, because that type of question should be answered after an investigation.

The CHAIRMAN. What is your understanding of the meaning of the term "closed shop"?

Mr. AVERY. Well, a closed shop is that you will get a position only by being a member of the union, that is the tight closed shop.

The CHAIRMAN. What is the union shop?

Mr. AVERY. Well, I would say that it is some variant of that. I am not quite sure what that is. That is not always clear. It depends on who defines it. And this maintenance of membership shop—

The CHAIRMAN (interposing). What I am trying to get at, Mr. Avery, is this: What is in your mind when you use the term "closed shop" or "union shop"?

Mr. AVERY. I should say that the union shop, or the principle of it, is that belonging to a union is a necessity to the degree that you lose your position if you exercise your freedom to go in or to go out—preferably to go out.

The CHAIRMAN. All right. Do you make any distinction between that and the so-called maintenance of membership shop?

Mr. AVERY. Oh, yes, the distinction is very clear, but the principle remains in there that it has the defects of the closed shop.

The CHAIRMAN. What is the distinction?

Mr. AVERY. The distinction is that the employee is given 15 days in which he may resign from the union.

The CHAIRMAN. Isn't there another distinction?

Mr. AVERY. Well, there may be.

The CHAIRMAN. And that is that you can employ anybody you want to, and he does not have to join the union?

Mr. AVERY. Yes; that is correct.

The CHAIRMAN. So that every employee in Ward's plant in Chicago, under the terms of the contract which you finally signed on December 8, 1942, had an opportunity to stay out of the union, did he not?

Mr. AVERY. Yes. That sounds very much better, Mr. Chairman—

The CHAIRMAN (interposing). That is a fact, isn't it?

Mr. AVERY. That is a cold fact, and readily admitted.

The CHAIRMAN. Then it wasn't a closed shop, was it?

Mr. AVERY. It was not a closed shop for that particular time, but the conditions that come into it, with the Government's persuasion and the use of it with the union organizations, are the practical thing

that deceives so many who are not familiar with the realities of the relationship.

The CHAIRMAN. Then when you advertised in the paper that the Government had imposed a closed shop on Montgomery Ward, you were mistaken, were you not?

Mr. AVERY. That form of the closed shop, is what we usually say, and it has the essence of the closed shop; and under other than a technical thing, this is the closed shop that has been demanded and acquired of the organization, with the minor difference that the chief essence of the thing still carries on in spite of the 15-day relief.

The CHAIRMAN. But, Mr. Avery, you just told me that a closed shop required a man to belong to the union in order to work, and that the maintenance of membership did not, and yet you stated in your advertisement that the Government had imposed a closed shop on you. Now, weren't you mistaken?

Mr. AVERY. Now, which one have you in mind, where is that ad?

The CHAIRMAN. You advertised it in the paper.

Mr. AVERY. What paper, what date?

The CHAIRMAN. I don't know which paper.

Mr. AVERY. We deny that that is so.

The CHAIRMAN. Then you never have claimed they imposed a closed shop on you?

Mr. AVERY. What?

The CHAIRMAN. You have never claimed that this contract required a closed shop, is that correct?

Mr. AVERY. We have issued several of these statements, and we have them all here, sir, and there need be no difficulty about it.

The CHAIRMAN. Just answer my question, please, sir?

Mr. AVERY. I am answering, and I insist that I be permitted to answer.

The CHAIRMAN. Have you ever claimed that the Government imposed a closed shop on Montgomery Ward at Chicago?

Mr. AVERY. We say here what these reports state.

The CHAIRMAN. I am asking you a question. Can't you answer it?

Mr. AVERY. No, sir; I cannot.

The CHAIRMAN. You won't answer it?

Mr. AVERY. Oh, I am not saying that I won't. I would be happy to answer any question that I can, but I won't be trapped into saying something that isn't true.

The CHAIRMAN. I am not trying to trap you.

Mr. AVERY. It sounds very trappy to me.

The CHAIRMAN. I am asking you whether or not you have ever claimed that the Government imposed a closed shop on Ward in Chicago?

Mr. AVERY. I have no recollection of any such statement.

The CHAIRMAN. You don't claim it now, do you?

Mr. AVERY. What?

The CHAIRMAN. That they imposed a closed shop on you.

Mr. AVERY. I will offer you the evidence of exactly what it is.

The CHAIRMAN. I want your statement right here and now.

Mr. AVERY. I prefer to give the facts instead of my assumption. The best evidence will be what we have said.

The CHAIRMAN. You can put that in the record if you want to, but what I want to ask you is whether or not now, here, before this committee, you claim or do not claim that the Government imposed a closed shop on Montgomery Ward?

Mr. AVERY. A form of the closed shop, we have used that term.

The CHAIRMAN. You have claimed that?

Mr. AVERY. A form of the closed shop, and that goes as our attitude at the present time. But your question is very different from that.

The CHAIRMAN. All right, you can make any explanation you want to.

Mr. AVERY. I am making the real explanation, the facts.

The CHAIRMAN. All right.

Mr. AVERY. Now then, the closed shop—you asked me these various things about these different grades of closed shop. You could very readily entangle me, because of my lack of knowledge of the various definitions offered at various times by the unions; but the freedom of the individual, which we are trying to protect, employer and employee, as to that, it is a form of the closed shop. That covers the point we wish to make. We regard that as illegal and unfair.

The CHAIRMAN. You do regard the contract that you signed in December 1942 as being a closed-shop contract?

Mr. AVERY. A form of the closed-shop contract, which was the maintenance of membership.

The CHAIRMAN. And yet you admit that anybody who worked for Montgomery Ward had a right to stay out of the union?

Mr. AVERY. He does for 15 days, if he has got nerve to resist the pressure and fear and shock that is put into him by these organizations—which most of them do not have.

The CHAIRMAN. And any new employee that you might have hired—

Mr. AVERY (interposing). May do the same thing.

The CHAIRMAN (continuing). Has free choice as to whether or not he would join the union?

Mr. AVERY. That is exactly right. That isn't effective, however, leaving the disadvantages of the closed shop out of it—and if it were, it wouldn't be acceptable to the unions.

The machinery, with the Government behind it, and the pressure that is put through, is a reality, Mr. Chairman, that you should be intimately acquainted with.

The CHAIRMAN. Well, I am intimately acquainted, I think, with these questions.

Mr. AVERY. I think you haven't the intimacy we have.

The CHAIRMAN. I might not agree on the question of how much influence the Government puts behind it.

Mr. AVERY. Well, it is very powerful.

The CHAIRMAN. What I want to get at, if I can, are the facts. Now, in the course of this case that we are investigating here, there were statements made in the minutes of the War Labor Board, by a man named Derby. Do you know him?

Mr. AVERY. Derby?

The CHAIRMAN. Yes, sir.

Mr. AVERY. No, sir; I never met him. I remember his public statement, which I thought a scandalous affair.

The CHAIRMAN. Do you know Mr. Roger Lapham, from San Francisco?

Mr. AVERY. Yes; I know him.

The CHAIRMAN. You know he made a statement in which he charged that Montgomery Ward had made false statements and half-truth statements, statements containing half truths?

Mr. AVERY. Not false statements?

The CHAIRMAN. Didn't he say false statements?

Mr. AVERY. Did he?

The CHAIRMAN. I thought he did.

Mr. AVERY. Well, I thought he didn't.

The CHAIRMAN. I will be corrected if he didn't.

He wrote you a letter, didn't he, Mr. Avery?

Mr. AVERY. Yes; he wrote me several.

The CHAIRMAN. Did you ever answer this letter?

Mr. AVERY. No; sir; not one.

The CHAIRMAN. The letter of December 24, 1942?

Mr. AVERY. I think not. I thought from his remarks that he wasn't a safe man to write to, and that he was defensive.

The CHAIRMAN. You wouldn't say that he wasn't a representative of industry, would you?

Mr. AVERY. I wouldn't go into the matter at all, I have covered my expression. He is not a satisfactory representative of Montgomery Ward. We have criticized those gentlemen, and Mr. Derby found lots of reasons to join the smearing campaign which wouldn't be justified by the facts. Smear, as you may have observed, in these relationships, is quite prevalent, and has been for 12 years.

The CHAIRMAN. You don't think Mr. Lapham is a good representative of industry on the War Labor Board?

Mr. AVERY. I thought he was a very bad one. I spent several hours trying to find out the philosophy, in a pleasant interview that extended from about 2 o'clock, I believe, until 20 minutes after 5, noncontentious, but to find out what this entirely unusual, new device really meant in labor relations; and I sat with Mr. Ching and I sat with Mr. Lapham, to get their information.

When I got through I thanked them profusely for the great time and courtesy they had extended in answer to me. They said, when I expressed my appreciation of that with great earnestness, Mr. Ching replied: "You know, you are so earnest and profuse in your expression of appreciation that I am somewhat puzzled. What have we done to merit such applause?"

"Well," I said, "I have been for months eager to find out what this new instrument means, I have been in the labor relations for many years, undoubtedly 40, and in responsible positions. There is something coming that I cannot fathom." I had made this arrangement through the kindness of Mr. Davis, of the U. S. Rubber Co., for whom Mr. Ching had been employed as a labor relations man, and he arranged the interview, and I spent the time in Mr. Ching's room. I said, "I have been eager to get that and know what are the principles that you are following, and what are the policies that you establish and run this organization by."

"Well," he said, "Yes; but what are the principles that we used?"

I said, "Mr. Ching"—and Mr. Lapham was within 4 or 5 feet—"you are not using principles, and you have established no policies; you are using expedients."

The result of that was that he, in a somewhat complaining tone, looking for his employer—who was present in kindness to me—said, "Mr. Davis." Mr. Davis was in an adjoining room. And he came slowly and walked in between the three of us. Then he repeated, complaining still, "Mr. Davis, Mr. Avery says that we are not acting in accordance with principles, and we haven't established policies, and we are acting by expedients." Mr. Davis turned around and walked back out of sight, and as we looked surprised with his silence, the answer came back, which was, "Well, Cy, I think he has got you."

The CHAIRMAN. You think Mr. Cyrus Ching is a good representative of industry, don't you?

Mr. AVERY. I think they are equally good, both of them, and the other two that were there as well. I think industry has been badly served by that entire thing, very earnestly, very truly, and not as an enemy of labor, but for someone who need, like all other industry, to be intelligently and fairly guided. It needed war measures to handle the relations between union, the employer, and the employee, and we are very eager to act in good relations with. But these things, I have expressed very clearly, sir, and I think you have heard them.

The CHAIRMAN. Yes. You don't approve, however, of the War Labor Board at all, do you?

Mr. AVERY. I don't approve of the methods that they are using in handling a serious responsibility.

The CHAIRMAN. You don't think they ought to take up the question of closed shop or union shop or maintenance of membership?

Mr. AVERY. I don't think that they should impose it as a governmental measure. I think your associates in Congress should do that if we are to have a law.

The CHAIRMAN. Didn't we give them that authority?

Mr. AVERY. No, sir; you did not.

The CHAIRMAN. Doesn't section 7—

Mr. AVERY (interposing). No, sir; never in the world. If you would do it clearly, there would be no cases of this kind here, sir. That is, in Mr. Ball's statement, you can find our position on that.

The CHAIRMAN. I understand that, but I want to get your position.

Mr. AVERY. My position is in that statement.

The CHAIRMAN. You are a graduate lawyer, yourself?

Mr. AVERY. Graduate doesn't mean much in law, does it?

The CHAIRMAN. That is one thing you and I agree on. [Laughter.]

Mr. AVERY. I assure you we agree on many things.

The CHAIRMAN. I hope so. But I do agree with you on that. I don't think a law school ever made a lawyer.

Mr. AVERY. No, sir; it didn't make one out of me. [Laughter.]

The CHAIRMAN. But if I correctly understand section 7 of the War Labor Disputes Act, we directed the War Labor Board in that act—

Mr. AVERY (interposing). You did, sir, but you didn't direct them in the relations that Montgomery Ward has, except at the little plant in Springfield, which we readily accept and act cooperatively with them, fairly and pleasantly.

The CHAIRMAN. We directed them to settle disputes which were certified to them by a conciliation service—

Mr. AVERY (interposing). In conformity with the labor relations legislation, which they have not done.

The CHAIRMAN. Mr. Avery, we have spent a lot of time here getting what happened in Chicago. I think we all know pretty well what happened. I am a little bit more interested in why it happened, and I am perfectly sincere in that statement. I would like to know why you, as a citizen of this country, felt it was necessary—as you evidently did—to resist the order of the President of the United States to the extent of requiring that you be bodily carried out of your office?

Mr. AVERY. Well, sir, it is very easy and it is very pleasant to call your attention to my reason for doing that. I believed that Montgomery Ward, in the position that it occupied, as was gradually developing over a period of 5 years, might finally be so national in scope, so free from the war relationships, as to bring out the terrible circumstances that exist at this moment, and for which this meeting is held to investigate, the march of dictatorship in this Nation. I have said these things before.

The CHAIRMAN. Then your purpose was to stage, you might say, an event there that would draw the attention of the people to it?

Mr. AVERY. That was not the intention at all, sir. I was the victim of that situation, I didn't create it.

The CHAIRMAN. I didn't charge you with creating it. I said it was your purpose to so spotlight that occasion—

Mr. AVERY (interposing). The plainest thing in the world to any open mind will be to see that our approach to these things, the publicity that we forwarded to the public, had been restricted to the narrow and fair limit of offering the public merely copies of the things we sent to the War Labor Board, and one exception to that was the thing that we published to employees when we had signed, against our will, under duress, not a contract but an order evolved by the War Labor Board which we had no obligation to do except our deference to the country due to the war relationship and our respect for the great responsibility of the President in his position as Commander in Chief.

The CHAIRMAN. Maybe I didn't understand you, Mr. Avery, but what I was trying to get at was why you thought it was necessary to require that those representatives of the Government pick you up physically and carry you out?

Mr. AVERY. I wanted to protect the rights, the constitutional rights—

The CHAIRMAN (interposing). Didn't your lawyers advise you that your rights would be protected without that?

Mr. AVERY. My lawyers didn't advise me a word on that subject, sir. I found from the experience, as I explained this morning, that the smear campaign that has gone through for Ward's, when it has stood up for these legal requirements, emanating from I know not where, but year after year we have been more and more pointed to as being the enemy of unions. We distinctly are friendly to unionism, but we are—

The CHAIRMAN (interposing). This question has nothing to do with the unions. This was between you and the President of the United States. Now, what I am trying to get at is why you insisted on being carried out by force?

Mr. AVERY. I found no way to demonstrate the conviction that I had that until there was a legal handling of this matter, and the right behind it of the President in this power, that any concession I made would be a concession of the rights of the corporation and of the citizens.

The CHAIRMAN. But do you consider you would have been making a concession if you had walked out at the direction of the President?

Mr. AVERY. That I did not risk. I had done that before, and the result of that was that the publicity of smear had gone out.

Now, on giving it up, it was necessary above all things in my own mind, and this was a purpose that I evolved out of that experience, with no word to either of these associates of mine, who sat through all these things and gave all the advice that all of us could give on the general situation. No, sir, on that there was no scheme for publicity, there was no ulterior motive. There was just the determination that—

I am the responsible individual for the welfare of this institution; the position that we take with our labor is sound and legal; the orders that we are receiving are unfairly based, and smack of dictatorship. I shall not put this down.

And I was impressed when the Attorney General said, "You are the only man in the United States who has not, when so approached, cooperated." And that convinced me at the time that no cooperation of any minor kind was going to serve the welfare of the Nation, but that I must sit there and refuse to cooperate with any concessionary attitude, and be lifted by pure force and carried out of there as the chief executive of that organization in the interests, sir, of liberty.

The CHAIRMAN. Well, it had nothing to do with your legal rights, did it?

Mr. AVERY. Yes; it did.

The CHAIRMAN. You think it had any effect on your legal rights?

Mr. AVERY. I have told you exactly what I thought; and it has been very successful, because it has brought to the attention of the American public that without making the concessions, I had stood on the rights of the citizen; no one has chastised me for that, and you would be interested to read the expressions from one end of the country to the other, that are quite moving, sir, in their interest, that something has been awakened in this Nation that has been asleep.

The CHAIRMAN. I have been told that when the United States marshal and his deputies came in, you said that was not sufficient force; is that correct?

Mr. AVERY. No, sir; I don't think so. You will understand that I had my office filled that entire day with people who came in as the representatives of these people, the Government's representatives—Taylor and Carusi—and as they came up and I rejected these things, I presume I may have stated that if I were the chief executive and if I were going to be removed from this office, it would have to be done only under force. There was no threat of force from any marshal at all. If the marshal could have exercised that, that would have been all right. But he did nothing of the kind. He walked in and I demanded, "What is your purpose here?" He gave it—

The CHAIRMAN (interposing). Didn't they ask you to leave in the presence of the marshal?

Mr. AVERY. They did not.

The CHAIRMAN. They did not?

Mr. AVERY. No, sir; we three were there in witness, and we have the record of the situation in verification, as well.

The CHAIRMAN. But you did leave and go home, as you said in your statement a while ago, about 6:20?

Mr. AVERY. Yes. I said, "The day is over; this is the length of time that we have here. Is there anything further that anybody wants done?"

The CHAIRMAN. And the soldiers were there at that time, were they not?

Mr. AVERY. They were there, but they had made no threat; and to my invitation if they were going to take me out, they answered first—this boy did—"Yes," and he was corrected by Mr. Taylor, and then he later, as I recall it, said "No." I said, "In that case, is there anything else that we can do?" He had not taken possession.

The CHAIRMAN. Well, you don't admit that he ever had possession, do you?

Mr. AVERY. Sir?

The CHAIRMAN. I say, you don't admit that he ever had possession, do you?

Mr. AVERY. I think that when they carried me out they got to a very unsatisfactory situation, and did, with their soldiers, put over some kind of thing. But I don't regard anything wholly and rottenly illegal as possession in the pure sense, if that is what you mean, sir.

The CHAIRMAN. That is what I mean, that you didn't recognize, and you don't now recognize, that the Government ever had legal possession of your property?

Mr. AVERY. They never had any right. That they physically took over the possession, I am compelled to admit.

The CHAIRMAN. Mr. Avery, there has been a good deal said about bayonets. The men who carried you out didn't have any bayonets?

Mr. AVERY. They put them down as they carried me out. They leaned them against the wall.

The CHAIRMAN. None of them tried to use any bayonets on you, did they?

Mr. AVERY. No; and I had no fear that they were going to do so. I was not intimidated by what went on. I have had a military education, I am familiar with it. I appraised it with ready glance, and what came in there didn't seem to be very military or frightening or very dignified.

The CHAIRMAN. Now, Mr. Avery, after you were carried out of the plant, your associates in the business there still declined to cooperate and to give any information to Mr. Taylor or his associates, is that correct?

Mr. AVERY. That is a thing that I don't know anything about except that I issued no directions to that effect. The entire organization—you may be interested in this kind of a comment—when I was carried out the indignation that surged through that institution was very deep, and evidently one after the other, as approached for directions, took in indignation the position that I had taken, but not on advice or not by direction.

The CHAIRMAN. As a matter of fact, you know, do you not, Mr. Avery, that the Government never actually operated Montgomery Ward's plant in Chicago?

Mr. AVERY. How in the world could they?

The CHAIRMAN. Well, they didn't, did they?

Mr. AVERY. Well, operated—I don't know what you mean by your words—but how can you take somebody with no experience at

all, who could get lost in the place—which is a half mile long and eight stories high—they sat in the office and phone about, but they certainly didn't operate Ward's.

The CHAIRMAN. That is right.

Mr. AVERY. You can't operate Ward's—I could as well try to operate your business, and I don't know a thing about it. I could be put in charge here, and I might take a bayonet and go sticking around, but I wouldn't do very much of the task.

The CHAIRMAN. Then the fact is that even after the court issued an injunction, Mr. Taylor, representing the Secretary of Commerce, could not operate Montgomery Ward's because he couldn't get any information out of any of the supervisory people?

Mr. AVERY. The injunction was obeyed.

The CHAIRMAN. I think that is true, I don't think anybody could be charged with violating it.

Mr. AVERY. Yes.

The CHAIRMAN. But there certainly wasn't any spirit of cooperation there, was there?

Mr. AVERY. There was an indignation that was very deep, and that I hope is going to travel from one end of this Nation to the other, that we may save it.

The CHAIRMAN. It is a fact that there wasn't any spirit of cooperation, not only on your part but on the part of any of the others?

Mr. AVERY. I wasn't there. There was a spontaneous and general angry resentment, I believe. It was uniform, I am told. You understand that when I went out, I stayed out. I was out for nearly 2 weeks.

The CHAIRMAN. Well, the other top officials who were named in the injunction also stayed out?

Mr. AVERY. Well, they took an inclusive 15. The president of the company, Mr. Ryan, was given directions, and on his own initiative he rejected them, and they told him not to come back into the building.

Then, in the night, with no notice to us, and with the public excluded, they went before the judge and got this injunction against 15 of us from interfering with the operation of Government management of the plant while on the premises.

The CHAIRMAN. Those 15 men just stayed away?

Mr. AVERY. They just stayed away. That is the only way they could be clear. One of the very able and high-grade men in the place in the mail-order house, the assistant to the operating manager, whose responsibility was there, and he at that time himself a member of the Government's force, saw a new bulletin on the place, went up there and pulled a pin or two out to take the bulletin to his office and to his associates to determine its significance, and there leaped out from behind an F. B. I. man, two of them, and this grand individual was carried off like a criminal, fingerprinted, manacled, and stuck behind bars without a communication.

The CHAIRMAN. Well, there were a lot of those notices torn down, were there not?

Mr. AVERY. That I don't know, but I imagine so from the attitude of the people themselves. They expressed their sentiments, I am told, by having scratched on these bulletins, swastikas. They had some idea that the fear that I have was demonstrating itself there, and in that I

suppose it brought other expressions of the kind, from whom we know not.

There are thousands of people in there—it is a crowded place—and if they were torn away that would have nothing to do with the management; the tearing of them away was a thing that we would deplore and would have prevented if we could have.

The CHAIRMAN. Mr. Avery, Secretary Jones offered to let you run the plant, didn't he?

Mr. AVERY. No, sir.

The CHAIRMAN. He did not?

Mr. AVERY. No, sir; that is not running a plant.

The CHAIRMAN. Didn't Mr. Taylor ask you to stay there and ask you to operate the plant for the Government?

Mr. AVERY. I think not. I would say, as I remember it—I must be careful about this—Goodloe took me aside to speak with me and he said, "I have just been talking to the Secretary, and he would give his right arm if he could prevent this thing happening."

The CHAIRMAN. He was talking about Mr. Jesse Jones, was he?

Mr. AVERY. I am talking about Mr. Jesse Jones, and he was talking about Mr. Jesse Jones; yes. I have no means of knowing whether there was any message there, but that was the beginning of something that might have been intended to make a suggestion of some kind; but it didn't reach that point because I walked out with the statement that I could understand the state of mind he must be in.

The CHAIRMAN. Well, did Mr. Taylor deliver to you a letter from Mr. Jesse Jones?

Mr. AVERY. Oh yes, indeed; but taking over a property of that kind under that illegal situation, and without justification, and asking them to pick up that management under this illegal situation, would not be the kind of a service that the chief executive officer would very happily undertake.

I would have rejected it if he had offered it, and I suppose very readily I was checking it because it is well known that in taking over these plants the Government has no skill in their operation and no knowledge that would justify an expectation that they would have it. They meant to take it over, dominate it, and put in the regulations that they wanted, and then, when in operation, turn it back, dominant from there on in. I had no inclination to follow that path.

The CHAIRMAN. And you don't think it would have been better for the country if you had cooperated with the Government and then tested the legality of the order in court after the seizure was made?

Mr. AVERY. We are not able, sir, to get any of our disputes, and have not been over a period of 2 years, into any court.

The CHAIRMAN. Well, you could have gotten it into the court after the seizure was made?

Mr. AVERY. We haven't been able to get into court, and when we were down there with this thing, what was done? Some messy trick that I can't understand, which ends up with handing it back, switching the thing about, putting through the strike, declaring it all off, and the judge supinely said, "Well, it is moot, there really is no dispute." His stenographer said, "Isn't it too bad; it was a literary gem." [Laughter.]

The CHAIRMAN. Well, I think we are all sorry that the literary gem wasn't—

Mr. AVERY (interposing). I don't think it was a literary gem.

The CHAIRMAN. Well, I don't know. But the point I was trying to get at is that you know, of course, that you could have gotten into court immediately after the Government got into actual possession?

Mr. AVERY. I would analyze the results, sir, that you are describing, as evidence, not that we could get in, but as evidence of the fact that we were not permitted, again, to get in, and I would call your attention to the press, lately, and some of the cartoons around. There was one of them which appeared yesterday in which I was pictured rapping with a cane—which I don't yet use—on the door of the Federal courts, and standing to the left is Jesse Jones and the Attorney General, and the cartoon says, "Well, that is one of the places we won't have to carry him out of, because he can't get in." [Laughter.] And we can't.

The CHAIRMAN. I think we will all have to agree now that you cannot get in in order to test the War Labor Board's decision. That is what that cartoon was about.

Mr. AVERY. We won't agree to that.

The CHAIRMAN. But the district court in Kentucky, since the seizure of the Montgomery Ward plant, has decided a case where the owner of the plant did go into court after the seizure—

Mr. AVERY (interposing). That was a war plant and has no relation to our plant.

The CHAIRMAN. Well, it has relevance to the question of getting into court.

Mr. AVERY. It has no relevance to Ward's getting into court from the position it occupies.

The CHAIRMAN. Why not?

Mr. AVERY. We are not a war organization. They have authority in war situations, but they have no authority in the situation where we sit.

The CHAIRMAN. But the question at issue in this Kentucky case, which was the *Ken-Rad Tube & Lamp case*, was not a question of being a war plant or not being a war plant, but a question of the right of the President to seize the plant.

Mr. AVERY. I think I would prefer to retain the position that I have taken with you, sir, that I am not a lawyer and that I would like you to ask that question of Mr. Ball, an officer of the company, who will discuss that with you.

The CHAIRMAN. All right.

Mr. Byrne?

Mr. BYRNE. Mr. Avery, your gross income in some past years has been upward of \$600,000,000, has it not?

Mr. AVERY. Our highest sales, Mr. Byrne, have been slightly above that.

Mr. BYRNE. Can you tell me, by a break-down, as to how much of that \$600,000,000 was represented by sales to agricultural elements?

Mr. AVERY. No; I wouldn't be able to do that.

Mr. BYRNES. Can you give me any estimate of it?

Mr. AVERY. No sir. It was not an insignificant amount. We distribute farm implements to a considerable degree. However, we are a very minor element in total distribution. I would say 2 to 5 percent, perhaps, of the distribution.

Mr. BYRNE. 2 to 5 percent of the total of 600,000,000 would be represented by sales to agriculture?

Mr. AVERY. No; 2 to 5 percent of the farm implement business would be represented by what we do.

Mr. BYRNE. Well, can you give me any percentage, estimated percentage, of the total gross sales per year which is represented by agricultural implements?

Mr. AVERY. No sir, I wouldn't be able to do that.

Mr. BYRNE. You couldn't say whether it was 20 percent or 30 percent?

Mr. AVERY. We would be glad to give you, Mr. Byrne, the actual information on any of these subjects, anything that you like, which we might have available.

Mr. BYRNE. Can you give us a break-down on that?

Mr. BALL. We can give you, sir, the figures showing the amounts, in dollars, of certain kinds of farm implements that were sold. We cannot tell you, sir, to whom they were sold, nor can we tell you—

Mr. BYRNE (interposing). I don't want that, I simply wanted a breakdown of the \$600,000,000, using that as a basis, and indicating the sales by your concern to agriculturalists throughout that particular year.

Mr. BALL. We cannot give you such sales to our customers because we do not know who comes into our stores to purchase merchandise.

Mr. BYRNE. But don't you know how much of your inventory was sold to agricultural elements? I am speaking of farmers, now, and poultrymen, and such.

Mr. BALL. We have no way of telling.

Mr. BYRNE. There is no way of telling that at all?

Mr. AVERY. No, sir. We could make some general estimate on it. We would be very happy to do everything that we can, but our sales to farmers are, in the public's mind, greatly—

Mr. BYRNE (interposing). Exaggerated?

Mr. AVERY. Yes, sir; and the things that we sell are a much more minor quantity, I think, Mr. Congressman, than you anticipate. We sell small rural machinery and more or less the minor, instead of the major things.

Mr. BYRNE. Mr. Avery, have you four plants manufacturing agricultural implements, or those things that are sold to agriculture?

Mr. AVERY. We have no plants manufacturing agricultural implements. We had a plant long before I had anything to do with this company, many years ago, in Springfield, that did manufacture some agricultural machinery. The machinery that we distribute at the present time is manufactured by the Avery Implement Co. of Louisville, and we distribute that in some part of the territory.

Mr. BYRNE. Then it is not so that four of your factories manufacture farm equipment?

Mr. AVERY. Oh, no, sir; we don't have any farm equipment manufacturing at all, unless you would call the little plant at Springfield one, where we make cream separators, and I think that is the only thing—no; we do have quite a line of these hammer mills.

Mr. BALL. We will be happy to furnish you, sir, with the amount of agricultural implements furnished by this Hummer Plant.

Mr. AVERY. We understand very well what you want. You would like to have those things that might be classed as being farming implements, and—

Mr. BYRNE (interposing). Mr. Avery, my question is directed wholly and solely to the question of whether or not a concern doing upwards of \$600,000,000 gross business per year is in any sense involved in what we would call the war involvements of this country at this time. That is the purpose of my question. I simply want to attempt to demonstrate—correctly or otherwise—whether or not such a gross sale, \$600,000,000, would represent something that, if it was confused or upset, might interfere with the unity of the country. That is, frankly, the purpose of my question.

Mr. AVERY. The answer to that will prove to be no, in our very firm opinion. We make nothing at all—we just distribute it, and if we were to be out of business somebody else would distribute it.

Mr. BYRNE. Have you any contracts for the manufacture of agricultural equipment?

Mr. AVERY. Yes, we have a contract, or an understanding with the Avery Implement Co., and they provide us, in accordance with that, with the things that they manufacture.

Mr. BYRNE. Can you tell us anything about the size of that contract?

Mr. AVERY. Well, I think that would be quite difficult, Mr. Congressman, but we can easily give you that information. I know that perhaps a million dollars a year was the understanding when we began with them, and it may have gone beyond that, but that is the one figure that I have in my mind.

Mr. BYRNE. We would be happy to have that information if you will put it in the record before you close your side.

Mr. AVERY. We will be glad to do that and we will be able to supply that within a few days.

Mr. BYRNE. Thank you.

Now can you tell me whether or not your company has ever asked for preferential priorities on the ground that same were essential to the war effort?

Mr. AVERY. Mr. Ball has that full information.

Mr. BYRNE. You say that you employ upwards of 78,000 people throughout the country?

Mr. AVERY. There has been a figure floating about, just as an up and down thing, of 78,000. We have had a maximum of practically 100,000 at the very peak, on one occasion, and I would say that if you would like the exact figures for any particular time we could supply them.

Mr. BYRNE. Could you tell me the floor and the ceiling of your employment? Would the floor be, say 60,000, and the ceiling 100,000?

Mr. AVERY. For the last few years?

Mr. BYRNE. Yes.

Mr. AVERY. Those are wide enough, sir, so that would probably represent it.

Mr. BYRNE. That variance is wide enough?

Mr. AVERY. It is a little too wide, but I think it is safe. I think from 70,000 up, during the last few years, would be better, but it

may be down to 60,000 at the present time. When the customers learned that the Government was in charge we had a most astounding, almost 50 percent, decrease in our mail-order business, and the people wrote in to declare that as long as that situation existed they would order no more from us. That tender pat pretty nearly put us out of business. [Laughter.]

Mr. BYRNE. Now Mr. Avery, do you manufacture any spare parts for shipment to Great Britain or any other Allied country, under lend-lease?

Mr. AVERY. If we do it would be under our one lend-lease contract, which is a surplus shoe sale out of our regular stock.

Mr. BYRNE. And what does that amount to?

Mr. AVERY. Mr. Ball can give you a statement on that.

Mr. BYRNE. Does your Hummer Manufacturing Co. at Springfield manufacture gun mounts?

Mr. AVERY. I think that there might be some small part of a gun mount that they manufacture, under a subcontract.

Mr. BYRNE. Do you manufacture any carburetors or airplane parts?

Mr. AVERY. Yes, we manufacture two things which are small parts of those items. These are intricate little machine parts that are made and they are subcontracted from General Motors, and we supply them quite effectively and satisfactorily.

Mr. BYRNE. Mr. Avery, have you ever asked for any deferments for any of your employees?

Mr. AVERY. Mr. Ball can tell you all about that. I am sure we have.

Mr. BYRNE. That is all. Thank you.

The CHAIRMAN. Mr. Monroney.

Mr. MONRONEY. Mr. Avery, I believe you recited this morning that you served some 25,000,000 customers an estimated \$600,000,000 worth of merchandise a year, in about 640 establishments, plus your mail order houses?

Mr. AVERY. That is correct.

Mr. MONRONEY. That has been largely the case since about 1928 or 1929, hasn't it?

Mr. AVERY. I would say that my experience with it started in 1931, the latter part of 1931. Our business then was at a very low ebb. Since that time the growth has come with the improvement of conditions, which you understand, and it has risen to this peak of \$600,000,000.

Mr. MONRONEY. You had a very successful operation in merchandising and, I believe, one that during the depression and immediately after the depression helped to reestablish, reopen and continue many manufacturing concerns, I believe, who made your merchandise?

Mr. AVERY. I don't understand that.

Mr. MONRONEY. I mean that your contracts for low-priced electric refrigeration, for example, and for other items that you were able to secure and merchandise, helped to keep these factories going and helped them to reemploy a great many people?

Mr. AVERY. Well, at what time? We didn't handle refrigerators until 1932, 1933, or 1934.

Mr. MONRONEY. I mean your contracts with the manufacturers.

Mr. AVERY. We had an unsatisfactory early experience with electric refrigerators, which terminated in 1933 or 1934. After that the machine that we put on the market was made by one of the largest concerns in the country.

I think I may be confused as to the question you asked.

Mr. MONRONEY. What I am trying to ask is this. Your merchandising has been a very useful adjunct to production in this country which, without your channels of distribution, industry wouldn't have had an outlet for its products?

Mr. AVERY. Well, it was manufactured and needed by the population, and had we not distributed it someone else would have. We didn't make it, we are just the retailers.

Mr. MONRONEY. But it had to first be made, and without some distribution channel it could not have reached the consumer?

Mr. AVERY. We have no demand ourselves. We created nothing. We presented it to the public and they would go about looking at our merchandise and then at other merchandise, and buy it or not.

Mr. MONRONEY. But through successful merchandising you help to create demand and you help to stimulate industry and keep it going?

Mr. AVERY. We fulfill the demand, creating a demand for a particular thing, perhaps, because of price, quality, and so forth. I would say yes to that extent. But it is a distribution service.

Mr. MONRONEY. That is what I am getting at, and it is an essential part of our economy, a very essential part.

Mr. AVERY. Production and distribution are what make it up; yes.

Mr. MONRONEY. Distribution is as important as production, isn't it?

Mr. AVERY. Well, I wouldn't say so because I think you have got to produce before you can distribute.

Mr. MONRONEY. But you have to have the market before you can produce—so you have the question of the hen and the egg.

Mr. AVERY. You don't produce if you haven't the market, that is right.

Mr. MONRONEY. But the point that I am making is that without distribution you couldn't have industrial production in this country?

Mr. AVERY. I would be glad to agree with you on something, Mr. Monroney, but we are only a very small part, I don't think we do 1 percent of the distributing business in the country.

Mr. MONRONEY. I don't know what the figures are but I believe that you would be perhaps the second largest retail store in the country?

Mr. AVERY. Yes; but there are 1½ million retail distributing agencies in the United States.

Mr. MONRONEY. But you would still rank as at least the second largest in the country?

Mr. AVERY. I think that is true.

Mr. MONRONEY. I think we are all agreed that what Congress wants is industrial peace on the home front during this war, because we are all fearful that strikes in one plant will spread into another plant and become an epidemic.

Mr. AVERY. We don't hook in on any such possibility.

Mr. MONRONEY. You think they are completely isolated cases with no interrelationship?

Mr. AVERY. Well, we think that from the nature of our business it doesn't matter.

Mr. MONRONEY. You agree, however, that distribution is essential in getting the goods from the manufacturer to the consumer? There is no other channel by which a manufactured item can reach the consumer?

Mr. AVERY. Yes; the channel of which we are a part, large but minor. We could disappear and distribution would go along without interruption at all.

Mr. MONRONEY. Without distribution, however, you wind up where your manufactured goods would do you no good?

Mr. AVERY. That is a question very much wider than Montgomery Ward. Our 1 percent would be absorbed so easily, sir, that it wouldn't be noticed.

Mr. MONRONEY. I am talking about the general distribution system, it is a very intricate system?

Mr. AVERY. It is too general for me to understand what it is you are trying to get from me.

Mr. MONRONEY. I am trying to get from you that production without distribution has no value in our economy?

Mr. AVERY. Well, I will give you—

Mr. MONRONEY (interposing). That a retailer is a very valuable adjunct—

Mr. AVERY (interposing). I will give you my full support on that, Mr. Monroney.

Mr. MONRONEY. But in the law, where I believe we differ is that the provisions of section 3 relate strictly to manufacture of things useful in the war industry and in the war effort, and fail to take into cognizance transportation, distribution and other factors involved. I believe we agree on that?

Mr. AVERY. Yes, sir.

Mr. MONRONEY. What probably will be one of the principal jobs of this Congress is that if these hearings reveal a No Man's Land in which we will still have guerilla warfare taking place, that this committee wants to try to recommend in its report, I presume, some methods for correcting that.

Mr. AVERY. Seizure of plants without authority certainly is not the method by which to correct it.

Mr. MONRONEY. Well, of course, there was seizure of about nine plants before the Congress ever acted. Do you approve of those seizures?

Mr. AVERY. Those I am not familiar with and wouldn't undertake to comment on.

Mr. MONRONEY. The North American Aviation, the coal mines?

Mr. AVERY. I would have great difficulty in approving the coal-mine performance.

Mr. MONRONEY. You don't believe that we should have continued the production of coal and then settled it later, you don't believe we should have seized the coal mines at the time they were first seized?

Mr. AVERY. I wouldn't go into that. I am not expert on that.

Mr. MONRONEY. It is a question of seizure without any legislation at that time. We had no Smith-Connally Act at that time.

Mr. AVERY. I would have to know more about the particulars of that, Mr. Monroney, before I would want to testify as to what it was.

Mr. MONRONEY. Well, it appears in your statement that the Smith-Connally Act narrowed the activities of the President rather than expanded them.

Mr. AVERY. We didn't make any such statement as that.

Mr. MONRONEY. I understood that that was in your statement this morning, that it was narrowed by the passage of the Smith-Connally Act.

Mr. AVERY. Would you like to read the statement?

Mr. MONRONEY. I have read it very carefully. I didn't mark particularly that segment, I don't remember whether it was in the cross-examination or the statement.

Mr. AVERY. Could you excuse me for a few moments while I ask one of my associates?

Mr. MONRONEY. Surely.

(Short recess.)

The CHAIRMAN. The committee will be in order.

Mr. MONRONEY. We were talking about having narrowed the law by the Smith-Connally Act, but if you don't recall that being in the record, it is not terribly important.

You mentioned that the composition of the War Labor Board was impractical, in your idea. Will you elaborate on that?

Mr. AVERY. I think I might repeat some of the things that I have said on it. The principal thing that is striking about the War Labor Board is, first, its construction, the way it was formed, the appointments that are made and who makes them, and then the action that it takes.

I would give approval of the appointments by the unions as being representative of unions and of the service to the interests of unionization that that has supplied. They know their subject and they know their objective and they do a good job of advancing their interests.

The people that are on the Board as representatives of the public seem to me to classify as academics without experience, frequently instructors of law in colleges, and of a pink persuasion, well established before they—

Mr. MONRONEY (interposing). What do you mean by "pink," Mr. Avery?

Mr. AVERY. I mean pink in the ordinary sense—prolabor might be a better word.

Mr. MONRONEY. You don't mean to say subversive?

Mr. AVERY. No, sir; just prolabor.

The result of that is to be found in the percentage of their decisions and in the recognition that goes throughout the country by those who appear before them of the certainty of the majority activity that so preponderantly takes place.

I would like to correct that to "prolabor union"—I am corrected.

Mr. MONRONEY. How about the industry members?

Mr. AVERY. The industry members, it would seem to me to be selected from among those business men who have inclinations much like we find with the professors that are representing the public. Many times they are men who have capitulated to the administration's attitude in our labor difficulties. The best illustration, of course, is the experience that you have with them yourselves, in what they do and how they act and what they think, and what kind of people you

are going to have when they approach you. They certainly do not have anything that leads one into the belief that they are firm and clear-cut representatives of the employer on the basis that I have approved the activities of the representatives of the unions.

One thing that is outstanding is their established understanding, when voting is taken on contentious points, that while they will be permitted to express their dissent in the early discussions of the contention, they are obligated, through some justification that I cannot imagine, to the recognized rule, spoken of quite frankly in our experiences, that you may vote during the discussion, but when the War Labor Board makes its full report that an employer must comply, it is the understanding and the agreement to cast their vote with the majority as a unanimous expression. I would say that kind of representative, in those two classifications, is responsible for a great wrong.

Mr. MONRONEY. It is the personnel of the Board, then, rather than the make-up of it, that is from industry, the public and unions, that you object to?

Mr. AVERY. It is the nature of their decisions; that is the difficulty.

Mr. MONRONEY. Well, of course, in selecting courts you can hardly tell what the courts will decide, and I imagine it is the same way with referees and umpires.

Mr. AVERY. Well, it is not pleasant to attack these gentlemen, many of whom I know and personally am fond of, and whose standards are entitled to respect and receive it.

Mr. MONRONEY. How would you approve their selection, who would you have?

Mr. AVERY. I would get better men.

Mr. MONRONEY. By whom?

Mr. AVERY. Would you give me the opportunity to fill the positions? I would guarantee it would be done without difficulty.

Mr. MONRONEY. I hardly think Congress could delegate that power.

Mr. AVERY. I would like to have it. It would be good for the country.

Mr. MONRONEY. Under our laws, of course, Congress has set up this War Labor Board under the tripartite system of labor, management, and the public—

Mr. AVERY (interposing). As a matter of fact, it is Government, and illegal Government.

Mr. MONRONEY. There is an act of Congress setting up the War Labor Board. I don't see how that would be illegal to attempt—

Mr. AVERY (interposing). The War Labor Board was set up by an act of Congress?

Mr. MONRONEY. It was confirmed by an act of Congress, and is a law today by an act of Congress.

Mr. AVERY. In a very qualified way, sir. Congress has placed limitations on them which they have not followed, and which the Government, in our recent experience, has altered by the action that brings us here, to include the dominance of the President by the Attorney General that sweeps everything away, and is utterly unacceptable.

Mr. MONRONEY. Of course, I think the Congress had in mind some enforcement, by someone, of the War Labor Board's decisions.

Mr. AVERY. Isn't it strange that it is not possible to find out, and that a Congressman has to guess at it?

Mr. MONRONEY. I don't think Congress is guessing at it. I think Congress intended the law to be enforced when all other means of conciliation had failed.

Mr. AVERY. It is the most confusing thing to read over and find out what all of that does mean, and the great service that could be rendered would be to make a clear-cut, understandable principle and application.

Mr. Ball tells me, or calls attention to the fact that the Attorney General argues that the War Labor Board's directions are advice, and do not need to be followed.

Mr. MONRONEY. He argues that section 7 is absolutely independent from section 3.

Mr. AVERY. That is right.

Mr. MONRONEY. Don't you think, though, that the advice is a pretty good thing to have before the seizure of any plant is undertaken?

Mr. AVERY. I don't think it has anything to do with seizure.

Mr. MONRONEY. You think it is completely independent?

Mr. AVERY. Yes.

Mr. MONRONEY. Your position is that Montgomery Ward is not essential to the war effort, and you make no challenge of the fact that your other manufacturing company, the smaller one that you mentioned this morning, is essential—I believe you are making no challenge of that seizure?

Mr. AVERY. We made no challenge of the seizure, and turned it over with every cooperation, and the plant is running in a very satisfactory, harmonious way.

Mr. MONRONEY. How many men does it employ?

Mr. AVERY. Less than 500—450, I believe. We illustrate by that action the attitude of the corporation in the war service.

Mr. MONRONEY. Are there other big industries, such as you describe in Chicago, in Springfield?

Mr. AVERY. I think there may be. That is not a large one, our proposition is a small thing.

Mr. MONRONEY. But you think—

Mr. AVERY (interposing). There are three or four other small factories in the area, Mr. Barr tells me, of about that size.

Mr. MONRONEY. But you seriously and conscientiously feel that it is genuinely, from a practical standpoint, more essential in the prosecution of the war than the whole of Montgomery Wards with its 25,000,000 customers?

Mr. AVERY. Well, the thing that we are doing is of no consequence other than when we are supplying these definitely war things. That is the only thing that has been covered, of course, what is essential to the war effort. The stretching of the imagination for this particular purpose, to prove that these stores of ours are necessary to the war effort, is a strained construction and not true.

Mr. Dewey. I asked that same question of the Attorney General in regard to Mr. Davis' statement as to his authority, and who should apply the findings that he had made, and put them into effect. It was on page 106 of Mr. Davis' testimony. Mr. Elston asked:

Didn't you say to Congress that you didn't want any authority to enforce the powers you already had?

Mr. Davis replied:

I don't know, Mr. Elston, whether you understand your own question or not, frankly. What I am saying to you is: We don't want any duty or power to enforce our own orders at all. We want to hand that over to the cop. We cannot be a successful tripartite agency if we are our own policemen. That doesn't mean that I don't think our orders should be enforced by anyone.

And if you will recall I asked the Attorney General just who that cop was, and I don't think that that as yet has been brought out satisfactorily, except by an Executive order or the action of the President direct under an Executive order, and that is one of the questions that is before this committee.

Mr. MONRONEY. You don't believe that Congress intended all the actions and pleadings and consideration of the War Labor Board to just be whistling in the wind, and to be just so much idle conversation?

Mr. DEWEY. I don't; and I certainly wouldn't think that management or labor should be placed in that position either, and I think that is one of the problems that should be brought out here and an orderly handling of the situation recommended by a report to this Congress.

Mr. MONRONEY. My understanding of the testimony of Mr. Barr was that section 7 and section 3 had absolutely no relationship to each other, and that regardless of the War Labor Board's hearing in the case it had absolutely no bearing whatever on the seizure.

Mr. DEWEY. I think they were probably suggesting that it had no bearing on the seizure of a plant that was not employed in a war industry.

Mr. MONRONEY. I didn't get that from their statement.

One more point on that. Don't you feel that there are many things in the war economy, such as the transportation system of the city of Chicago, the bus lines, and things of that kind, which are not spelled out here, but yet which are things that would paralyze the war effort, and were certainly in the mind of Congress although not at that time before us?

Mr. DEWEY. In the first place, it leaves the whole matter to the judgment of a certain group's guess as to paralyzation, just exactly as there was some controversy in the sixth regional area as to the necessity of Sears, Roebuck and Montgomery Ward—and I do hope that we can spell these things out.

Mr. MONRONEY. That is my wish, and that is why I was trying to develop the interrelationship of some things that are not spelled out in this act, but which do have a very strict bearing on the prosecution of the war, and I believe the Chicago transportation system would be an example of that.

The CHAIRMAN. Mr. Curtis?

Mr. CURTIS. Mr. Avery, I noticed what you had to say, and what was said to you in reference to your refusal to voluntarily choose to turn over the Chicago properties of Ward's to the Government. Montgomery Ward belongs to the stockholders, does it not?

Mr. AVERY. Yes, sir; about 63,000 of them.

Mr. CURTIS. And you are a servant of the stockholders?

Mr. AVERY. Entirely, sir.

Mr. CURTIS. It is their property?

Mr. AVERY. Yes, sir.

Mr. CURTIS. I want to ask you—does Ward's own or operate, in Chicago, any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith?

Mr. AVERY. Absolutely not.

Mr. CURTIS. With reference to your statement that these F. B. I. men suddenly appeared and took one individual into custody, do you know whether or not those F. B. I. men were concealed?

Mr. AVERY. I think they tried to conceal themselves, from what information came to me. They were scattered throughout the plant and had a false-whisker appearance, dressed in a kind of rube manner, I suppose on the assumption that it was a rube supplier and that they would disguise themselves in that manner. They were reported as acting as conscious, but appearing indifferent and absent, and they struck the attention of everybody. Of course it was not my privilege to be in the place.

Mr. CURTIS. In reference to your statement that certain people had marked and scratched and drawn pictures on notices that the Government had posted up, I believe you stated that some of them had drawn some Nazi emblems?

Mr. AVERY. Yes, sir.

Mr. CURTIS. What people were you referring to, the public or your employees?

Mr. AVERY. That we don't know at all. That would be somebody that would come along and indicate their disapproval—and that would be the employees. It would be done without being seen by the supervisory officers, of which there would be nearly 500 supervising these various groups.

Mr. CURTIS. Was any of that done with the consent and approval of the management?

Mr. AVERY. Oh, my, not in any way; no, sir.

Mr. CURTIS. Mr. Avery, I understood that you and Chairman Ramspeck agreed that the Government really did not operate Ward's plant at any time?

Mr. AVERY. Of course, I must say that in some fashion, associated with my riding out on the sidewalk, something occurred there that put the possession of the plant illegally into the hands of the Government.

Mr. CURTIS. Did they ever, to your knowledge, execute the details of managing that business?

Mr. AVERY. They supplied no one to do it. Mr. Taylor, who was in charge, sat in my room for a few days and then came to Washington. He had no stenographer. He telephoned and talked with some of his own associates. They had in mind something about taking over the books, but taking over the books of Montgomery Ward is an event. They had physical possession of them.

Mr. CURTIS. When Mr. Biddle was before our committee I asked him this question:

Mr. CURTIS. Do you contend that the taking of Ward's was for a public purpose?

To which Mr. Biddle replied:

Mr. BIDDLE. Certainly I do.

Then the following colloquy took place:

Mr. CURTIS. For what purpose did the Government use it?

Mr. BIDDLE. To operate the plant. You mean what was the public purpose, is that your question, Mr. Curtis?

Mr. CURTIS. Yes.

Mr. BIDDLE. To operate the plant.

Now while Mr. Biddle was operating the plant you say that the orders fell down 50 percent?

Mr. AVERY. As soon as it was in the hands of the Government they fell down between 40 and 50 percent. In that time I was not permitted to be in the building and I got my information indirectly. But say that they fell off 30 to 50 percent as the result of the indignation of the public.

Mr. CURTIS. They assisted the war effort by 50 percent in reverse?

Mr. AVERY. It is just about the same as the War Labor Board punishing the laborer by taking the owner's plant. We enjoyed that kind of a situation through the kindness of the customers.

Mr. CURTIS. This morning I inquired about the public announcement made by the union that the strike was over, that they were going back to work, which announcement occurred 2 days before the Government attempted to take possession of the plant. Will you, or your associates, attempt to secure for this committee, and insert in the permanent record, a copy of the newspaper article or articles that show that?

Mr. AVERY. Yes, we will.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Mr. Avery, what, if anything, did the Government accomplish by taking over your plant, that you couldn't have accomplished if they hadn't taken it over at all?

Mr. AVERY. Nothing that I know of, except to discover the state of mind of the public which made them search for a new objective, and that having gotten into this illegally, how in the devil to get out. [Laughter.]

Mr. ELSTON. It was just about as hard to keep the Government in after they got in, as it was to keep them out in the first place?

Mr. AVERY. They had an awfully hard time figuring how they might lay the thing down, because it was an increasing burden and the indignation of the public was real and growing, and the indignation is manifesting itself as a kind of an education in the realities that are flooding the country, from such information as I am able to get.

Mr. ELSTON. What might commonly be called a "hot potato?"

Mr. AVERY. Yes, sir; a remark very frequently used.

The CHAIRMAN. Does anybody else have any questions of Mr. Avery? (No response.)

The committee will then take a recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:25 p. m., the committee recessed until 10 o'clock, Wednesday morning, June 7, 1944.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

WEDNESDAY, JUNE 7, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to adjournment, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Rainspeck (chairman) presiding.

Present: Representatives Rainspeck (chairman), Clark, Byrne, Monroney, Dewey, Elston, and Curtis.

The CHAIRMAN. The committee will come to order, please.

Mr. Avery, I would like to ask you one more question before we take up with your associates.

STATEMENT OF SEWELL L. AVERY ACCOMPANIED BY STUART S. BALL AND JOHN A. BARR—Resumed

The Chicago Times has sent me a copy of an editorial—I don't know what date it is—but anyway, it is in the form of an open letter to me as chairman of the committee. Among other things, in this editorial they quote what they claim is a statement you made. The statement is as follows:

Labor is an inescapable commodity governed by the law of supply and demand.

I just wanted to ask you whether or not you made that statement?

Mr. AVERY. I made a statement that could be, by the Times, screwed into that kind of a misstatement. It was this, that the rules of supply and demand affect the individual and the worker.

The CHAIRMAN. All right, sir.

Mr. AVERY. Does anyone question that that is not so?

The CHAIRMAN. If you are asking me, I would say yes.

Mr. AVERY. I would understand that.

The CHAIRMAN. Of course, it is affected by the law of supply and demand, but I don't think labor is a commodity.

Mr. AVERY. I think, for your understanding, I will say this, that I mean that under these war conditions our labor circumstances have advanced to whatever condition you want to describe it, as a result of the great demand for labor and its extreme shortage due to the war.

The CHAIRMAN. Do you recall when that statement was made?

Mr. AVERY. No; it was an incidental and a minor thing that I can hardly recall at all; and it was not said in any public relation, but I imagine some discussion with a friend, and someone has interpreted that, and it is such a frail affair as to be almost best answered by saying altogether that the conversation didn't exist.

The CHAIRMAN. The implication of it is that labor is not to be considered any more than an inert package of goods.

Mr. AVERY. That isn't the situation at all. Of course, the political significance of that is that human beings are to be treated like wheat or any actual commodity. Unfortunately, that circumstance is the great problem that the world faces. I imagine if we were to look at India that we might have to answer that the situation there was a commodity situation in which the demands of the population quite exceeded any powers of production, and that they starve and have starved for centuries, and will so long as that unbalance maintains.

The CHAIRMAN. Even little Japan is more or less in that same category.

You don't look upon the people who work for Montgomery Ward as entitled to no more consideration than a farm implement, do you?

Mr. AVERY. I am very glad to quiet your disturbed state of mind, sir, by saying that if I had a brutal character of that sort—

The CHAIRMAN (interposing). Don't put words in my mouth; I didn't say any such thing as that, Mr. Avery. I am giving you an opportunity to—

Mr. AVERY (interposing). The implication, of course, after 12 years of vicious assault, is that any people working in an industrial life, and particularly with the large corporations and capitalism, is the kind of an animal that the implication is trying to get over; and to recognize the unanswerable economic problems that we are all struggling hard to cure, it becomes very easy to point out that these great, powerful institutions are headed by brutes who make their success by crushing the people.

Would you like me to deny that that is my purpose in life?

The CHAIRMAN. I just made the statement that I didn't presume that you felt that way about human beings.

Mr. AVERY. Well, thank you. I got the impression that the purpose was to bring the thing up and to leave that implication.

The CHAIRMAN. Well, the purpose was to clear up a public editorial in a paper in your own city, which is addressed to me as chairman of this committee; and I am, of course, presuming that you would agree that any newspaper has a right to discuss this matter.

Mr. AVERY. I should say they had, and that New Dealer has wider rights and goes beyond them with less regard for the truth than most papers you would be familiar with.

The CHAIRMAN. Of course, I am not familiar with the Chicago Times.

Mr. AVERY. Well, you are in a position to become familiar with it right now.

The CHAIRMAN. All right, sir. I just want to say to you, though, Mr. Avery, that I thought it was important enough to give you an opportunity to answer it.

Mr. AVERY. Well, I would like to answer it very seriously, which I have done; and I would like to say that I head an institution formed by a man named Aaron Montgomery Ward who, as a boy, determined to go into merchandising, and spent his early life in moving from one position to another in Chicago until he discovered a device that had perhaps been learned to some degree before, but he brought into existence something that, as a human benefaction, is the thing we are speaking about, and it was a means of bringing economy so

that the consumer—which includes us all—could get more for less; and the ear that the public gives to Montgomery Ward's service has been extended to all the economies that have come up by that better thing of distribution that Mr. Monroney was on the edge of yesterday. That thing involves a service. I should like to declare, sir, that I was attracted to this position because it seemed to me in the corporation's ability to benefit the millions we had an institution that had something of the spiritual in it beyond even the normal economic life, because we must make and distribute our wealth if we are to have those things in rights and privileges and education and health that we long to have the race attain.

As the head of it I have felt that obligation, and I do become a little annoyed and sensitive when, in the face of those efforts which have been earnest and moderately successful, I find I attain the classification of someone with entirely different objectives.

The CHAIRMAN. Well, you have been successful with Montgomery Ward, haven't you?

Mr. AVERY. Well, Montgomery Ward has been successful with me.

The CHAIRMAN. I mean, the profits of the business have increased under your administration?

Mr. AVERY. I think all operating concerns have had the benefit of an uplift from the depression of 1931, in almost a steady line over into this war era, which has made, of course, some of the heights that the business attains.

The CHAIRMAN. How do your profits for 1943 compare with those for 1942?

Mr. AVERY. Well, I don't remember. They very greatly improved. Starting when, did you say?

The CHAIRMAN. I said, how did your profits for 1943 compare with 1942?

Mr. AVERY. They were less.

The CHAIRMAN. They were less?

Mr. AVERY. Yes.

The CHAIRMAN. Were your sales less or more?

Mr. AVERY. The sales were less.

The CHAIRMAN. Your sales were less?

Mr. AVERY. Yes.

Mr. Congressman, in the back of the annual statement of Ward's there are a half a dozen tables that show the change in all the elements that measure success, for a period of 10 years, and we would be very glad to produce that.

The CHAIRMAN. I don't think it is important enough. I just wanted to bring out that you had improved the financial situation of the company, which I understood was true.

Mr. AVERY. Yes, sir.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Mr. Avery, I believe you testified yesterday as to the number of stockholders in your company. Do any of your employees own stock in your company?

Mr. AVERY. Yes; I think a large number.

Mr. ELSTON. That includes, does it not, those who are members of a union as well as those who may not be members?

Mr. AVERY. We don't know who are or who are not members of the union, Mr. Elston, and we make it a principle of avoiding that.

We have an educational system that Mr. Barr has conducted here for several years, in which the distinguishing between those who are union members and who are not union members is made a matter of determined indifference.

Mr. ELSTON. You treat them all alike?

Mr. AVERY. We treat them absolutely alike.

Mr. ELSTON. That is all.

The CHAIRMAN. There is just one other thing that occurs to me. Mr. Avery, you said yesterday, at some time in your testimony, that Henry Ford and General Motors didn't like the unions any better than you did.

Mr. AVERY. I asked if you thought they did. You didn't answer that.

The CHAIRMAN. Of course, I don't know. Do you?

Mr. AVERY. I have a strong impression from their activities.

The CHAIRMAN. The implication was that you thought they had been forced into signing contracts with the unions.

Mr. AVERY. I assure you there is no doubt about it.

The CHAIRMAN. There is no doubt about it?

Mr. AVERY. No, sir.

The CHAIRMAN. All right, sir.

I think we will take up Mr. Barr next.

Mr. BYRNE, have you any questions?

Mr. BYRNE. Mr. Barr is a gentleman who might be able to answer some of the questions I asked of Mr. Avery yesterday.

The CHAIRMAN. Mr. Barr, suppose you state for the record just what your job is, so we will have it clear in our minds.

Mr. BARR. The title of my position is manager of labor relations for Montgomery Ward. Under that I am directly in charge of all relationships between the company and organized labor. All negotiations between the company and any labor unions are conducted by me or under my supervision. In addition to that, I am interested in the relations and welfare of the employees of the corporation generally.

The CHAIRMAN. How long have you been with the company?

Mr. BARR. Since October 1, 1938. I was with the company back in 1933 and 1934 for a couple of years.

The CHAIRMAN. Has your experience with labor relations included some other employment elsewhere?

Mr. BARR. No; my experience in the field of labor relations has been gained during my employment with Ward's.

The CHAIRMAN. All right, Mr. Byrne.

Mr. BYRNE. Mr. Barr, are you in a position to advise us as to the question of preferential priorities of the Montgomery Ward Co. sought for the war effort?

Mr. BARR. Mr. Ball is in a better position than I am to handle that, Mr. Byrne. Mr. Ball is the head of the company's law department, and under his supervision those priority problems are handled. I have had no direct connection with them.

Mr. BYRNE. Are you in a position to answer a question as to the business of Montgomery Ward with our Government relative to lend-lease?

Mr. BARR. No. Mr. Ball will be in a position to handle that.

Mr. BYRNE. I have no more questions.

The CHAIRMAN. Mr. Dewey?

Mr. DEWEY. Mr. Barr, after the election which took place while the Montgomery Ward Co. was under the management and control of the Government, the next step, I presume, would be, a bargaining unit having been developed by that election, to take some steps in regard to a new contract. Is that correct?

Mr. BARR. Yes. Following the election, which was held the first part of May, the union made a request of us to meet with them for the purpose of bargaining a new contract, and that meeting was held.

Mr. DEWEY. Would you elaborate a little about this? I have had it brought to my attention that nothing has developed out of that meeting. There were some statements to that effect in the paper, and they made a point of the fact that there was no progress being made, and that there was some dissatisfaction due to that on the part of the union, that they were in exactly the same position that they were prior to the election, and that there had been no progress made. Could you tell me what are the steps—

Mr. BARR (interposing). Yes; I will be glad to comment upon that. I think I know to what you refer.

This union has published many false charges, the substance of which has been that Ward's has failed to bargain with them in good faith.

Mr. DEWEY. As a matter of fact, that was exactly what I saw, that Ward's would not bargain with them; and naturally that is, I think, something that should be brought out here at this time, as to what steps are proper and whether all effort has been made on both sides to reach an agreement.

Mr. BARR. Yes; I will be glad to comment upon that.

We have met with this union and bargained with it, with respect to any and all demands which it has made against the corporation, whenever requested to do so. We have negotiated with them or bargained with them on all of the points which they have raised.

In this current bargaining, as I mentioned, only one meeting has been held. That meeting was ended with the thought that further meetings were to be held for the purpose of further negotiations on some of the points which had been raised.

It is true that at this time no agreement has been reached with this union. This union has announced at various times since the beginning of our relationship that they would never sign a contract with Montgomery Ward unless the contract provided for some form of closed shop.

For example, we have a local of this same international union which has organized our employees in the retail store which we have in Detroit. I met with that union in Detroit, a year or a year and a half ago, in a series of bargaining meetings, and reached an agreement there with respect to wages, hours, and various conditions of employment—vacations, holiday pay, and things of that sort—which came up.

We reduced our points of agreement to written form, in the form of a contract. However, this local, this C. I. O. local at Detroit, refused to sign the agreement because, they said to me, "We are under instructions from our international officers not to sign any contract with Montgomery Ward which does not provide for some form of the closed shop." The particular form of the closed shop that they were talking about there is what is generally referred to as the union shop, which is

identified to mean that all of the employees must join the union within 10 days in order to retain their jobs.

We have bargained with this union as we have bargained with various other unions at other locations where our employees have organized together into a labor organization, and those negotiations at many other places with other unions have resulted in signed, written labor contracts—

Mr. DEWEY (interposing). May I interrupt? Was it the same local?

Mr. BARR. No; I say with other unions.

This union at Chicago has made charges on many previous occasions, as I mentioned, to the effect that the company fails to bargain with them. They do that as a part of this propaganda program which was referred to yesterday, in an attempt to smear the company's policy in the eyes of the employees and the company's customers and the public generally.

Back in 1941 they presented that failure to bargain charge to the National Labor Relations Board, which has the authority under the law, the National Labor Relations Act, to enforce the legal obligation of employers to bargain collectively with any union chosen by the majority of its employees—

Mr. DEWEY (interposing). Would that be called an unfair labor practice?

Mr. BARR. The failure to bargain with a union is known as an unfair labor practice, and is so specified under the National Labor Relations Act. The National Labor Relations Board held a hearing in 1941 on this union's charge, the one which you mentioned, that the company failed to bargain with it in good faith. The Labor Relations Board held a hearing on that, and after investigating the facts and after completing their hearing, dismissed the charge and found that the company had bargained with this union in good faith.

I might say, in further explanation of that charge, that this union has expressed the philosophy from the beginning that a failure to grant their demands is a failure to bargain, and it is upon that basis that they make the charge, because they have made demands upon us which we have not seen fit to grant. But as the Labor Relations Board expressly said in the case to which I have just referred, the law does not impose upon an employer the legal obligation to accept the demands made upon him. He is under an obligation to bargain with the union, and that we have done; and as I say, at many locations that bargaining has resulted in signed, written contracts. It has not in Chicago.

Mr. DEWEY. In the Chicago case, are any of the points except the maintenance of membership settled? Is the stumbling block just that one, or are there other stumbling blocks, or do you not arrive at those because the main one seems to block all considerations?

Mr. BARR. Well, I would state it this way: During our current bargaining at Chicago, the union presented some 17, I believe, separate demands against the company. We have discussed, and negotiated with them, each of those demands. In other words, their demand for a so-called union shop is not the only point upon which we are in disagreement. There are others. However, most of the others flow from that same principle and are tied up with the same principle of granting a special privilege to the union, or favoring those employees who are union members over the employees who are not union members; and as was stated here by Mr. Avery a few minutes ago, it is,

and has been all through this period, our well-established policy to treat all of the employees alike, and not to give one employee an advantage over another, either because he is a union member or because he is not a union member, but to treat them all alike.

So most of our differences with this union have arisen from that principle. That doesn't mean that there aren't other things, that you would say are disassociated from that principle, in which we are not in full agreement. For example, this union made a demand upon this company that all of the wage rates in the plant be increased a flat 10 cents an hour. The company has given consideration to that demand and carefully analyzed the wage rates which prevail in our place at this time, comparing them with the wage rates prevailing in other establishments in this industry in Chicago. As a result of that we have, in a counteroffer to the union—which has been submitted to them in writing—offered some upward adjustments in our wage rates. We have not agreed to the flat 10 cents an hour increase, don't you see, but we have offered some increases. That is the status. We are not in agreement on that point, but it is being bargained, I would say.

Mr. DEWEY. May I ask you this: In connection with the Little Steel agreement, there was what has been variously referred to as "holding the line," and if I recall it the increases were to be 15 percent over and above the wages paid on January 1, 1941. Would you believe that the wages paid in Ward's would have followed along, because that is supposed to have been somewhat in line with the increased cost of living? I wonder how your wages have kept pace, percentagewise?

Mr. BARR. Yes. Our experience with the War Labor Board has been that their chief effort in dealing with these problems has been to find devious manners of escape from adherence to that so-called Little Steel formula.

For example, back in the fall of 1942, at the time the War Labor Board issued its first wage order against Ward's, the wage rates prevailing in our Chicago properties in the fall of 1942 were substantially more than 15 percent higher than the rates had been in January of 1941. As I recall the figure now, it was approximately 26 percent higher. Nevertheless, the War Labor Board issued a flat—

Mr. DEWEY (interposing). Was that an average?

Mr. BARR. That was an average; the average was 26 percent higher. Nevertheless, the War Labor Board was not deterred by that from ordering a flat 5 cents an hour increase in Ward's Chicago plant—that in the face of a finding also, made by wage analysts of the Bureau of Labor Statistics of the Department of Labor, that the wage rates then prevailing in Ward's retail store at Chicago were higher than the wage rates prevailing in any comparable store in that area. That is, the Bureau of Labor Statistics came in, made a survey of Marshall Field and the other chief department stores in Chicago, and found that Ward's wage rates were the highest, and that is a report on file. But 5 cents an hour was added against Ward's. No order, or no requirement of the law, was made that other employers—Sears, Roebuck or any of Ward's competitors—should raise their wage rates 5 cents.

Ward's accepted that order and put the wage increase into effect.

I am just reminded that the professed basis upon which that 5-cent increase was ordered was so-called secret information in the hands of

the Board and certain of their representatives who had made this study, the basis never being revealed to us so that any direct attack could be made against it.

The wage rates which now prevail, to answer the last part of your question as I understand it, the wage rates which now prevail in each and all of our properties at Chicago are substantially more than 15 percent higher than those rates were in January of 1941.

Mr. DEWEY. Substantially more, you say?

Mr. BARR. Substantially more than 15 percent above.

Mr. DEWEY. I have just two other questions. One of them is this: I understand that the so-called Schwinn warehouse has been unionized for a long period?

Mr. BARR. Since the summer of 1940.

Mr. DEWEY. Now, was there a contract with that union, and is it the same union that you are now dealing with?

Mr. BARR. It is the same union. We have never had a contract with the union covering the Schwinn warehouse. It was in connection with the bargaining over a Schwinn warehouse contract that the union made its charge, in the spring of 1941, that the company had failed to bargain with it in good faith. That is the case that I previously referred to, where the National Labor Relations Board found that the company had bargained with this union in good faith. That, I might add, as I stated in my prepared statement submitted yesterday, is the only case that we have had with this union in Chicago before the National Labor Relations Board, and that case was decided in favor of Ward's.

Mr. DEWEY. What was the final result of the election held at the time the Government was in possession of the plant? As I understand it, theretofore there had been various bargaining units, but in that election it gives an over-all picture, I would suppose, of the Chicago operations, due to the fact that they were all bundled together into one ballot; is that correct or is that not correct?

Mr. BARR. No, the election held in May—on May 7, I believe it was, or May 9—was not an election among all of Ward's employees in Chicago. As I pointed out in my statement yesterday, several thousand employees located in the same building with the retail store were excluded from the election. They were excluded because the union, although having some members among those employees, was not particularly strong, while at the same time the Board went over 4 miles away, to the Schwinn warehouse, and included it in the same unit. You see, previous to May of this year, this order of the Labor Relations Board which we have referred to, the Schwinn warehouse, the mail-order house, and the retail store had been established by the Labor Relations Board as separate bargaining units, and the previous elections had been held in each of those places separately.

However, as a part of the gerrymandering of their May 2 order, they joined them all; and then when it came to counting the ballots—and I was there—they dumped the ballots from one box into the other box and stirred them all up so as to make it impossible to determine the independent vote of the retail store and the other individual branches.

Mr. DEWEY. What was the final count or tally on the election?

Mr. BARR. The majority of the employees who voted, voted for the union as their representative. I can give you the exact figures.

Mr. DEWEY. I would like to get the exact figures as to the number of people that cast ballots, and the pros and cons.

Mr. BARR. The company has, in its employ in Chicago, between 7,000 and 8,000 employees who would be eligible for membership in this union. However, the Labor Relations Board limited the election to approximately 4,700 of those employees.

In the unit comprising the Schwinn warehouse, the mail-order house, and the retail store, there were 4,737 eligible voters. Of that group 3,905 cast votes, of which 2,340 were for the union and 1,565 were against the union. There were 273 additional votes cast which were challenged, and inasmuch as the 273 was not sufficient to swing the election either way, they were not examined or the validity of the challenge determined by the Board.

Mr. DEWEY. Would you just go back one moment to the total—I put down the number of voters eligible and the ones who voted pro and con, but I did not put down the total number of employees.

Mr. BARR. I say there are between 7,000 and 8,000 employees employed in our properties at Chicago who would be eligible for membership in this union. Now, I can submit later a more exact figure, but it is approximately from 7,000 to 8,000.

Mr. DEWEY. I have nothing more.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Right on that point, Mr. Barr, do I understand you to say that prior to this election all of these units had been considered as separate bargaining agencies?

Mr. BARR. Yes, sir; and they had been so established as separate bargaining agencies by orders of the National Labor Relations Board.

Mr. ELSTON. When was the first time they ever consolidated them and compelled a vote in the consolidated form?

Mr. BARR. On the order of May 2, 1944.

Mr. ELSTON. Do I understand you to say that they consolidated the Schwinn warehouse, the retail store, and the mail-order house—

Mr. BARR (interposing). Into one bargaining unit.

Mr. ELSTON. Into one bargaining unit, but excluded the other four?

Mr. BARR. By the "other four," do you refer to the four other bargaining units that had been previously established?

Mr. ELSTON. Yes.

Mr. BARR. Yes. These other four units are four administrative departments, which had been separately set up and established by agreement between the union and the company at various times during the year 1942, at different times during the year 1942. Those other four units, in other words, had not been established by the Labor Relations Board, but had been established as the result of agreement between the union and the company, and their original majority in each of those four units had been determined between the union and the company by checking their membership cards against the pay-roll list in the respective departments.

In this order of May 2, 1944, the Board established as a second bargaining unit the combination of the four administrative departments which had been previously recognized, and those four departments voted together as one unit. However, it is significant that although the company has a large number—30 or 35—administrative departments in its Chicago properties, the Board excluded the employees of all of them except these four in which the union claimed to have a majority.

Mr. ELSTON. How were they excluded—by order of the Board?

Mr. BARR. By order of the Board. In other words, the Board, in its order, specified the employees who were eligible to vote in the election of this second unit, and it included in that only the employees of these four departments.

Mr. ELSTON. What reason did they give for excluding the others?

Mr. BARR. The reason for that was that the union only claimed to represent the majority in these four. In other words, they held the election only in the units in which the union claimed to represent a majority.

Mr. ELSTON. What possible reason did they give for consolidating the Schwinn warehouse, the retail store, and the mail-order house?

Mr. BARR. The reason which they gave for that, I set forth in my statement yesterday, and I will just refer to that briefly again. Mr. Reilly explained the reason for that to this committee when he testified. He testified at pages 194, 219, and 220 of the transcript that Ward's and the union had agreed between themselves to combine these three units into one contract back in December 1942. The exact words of his testimony were as follows:

The reason we put * * * [the Schwinn warehouse] in was because the company and the union themselves had combined them in the contract of 1942 which had expired.

And as I pointed out yesterday, that is an entirely and wholly false reason because, as a matter of fact, the company and the union have never agreed to combine those three units.

Mr. ELSTON. Is there any similarity between the work performed in the Schwinn warehouse and that performed in the retail store and the mail-order house?

Mr. BARR. There is no similarity whatsoever between the work performed in the Schwinn warehouse and the retail store. There is some similarity in the nature of the work in some of the departments as between the Schwinn warehouse and the mail-order house. However, the Schwinn warehouse and the mail-order house and the retail store, each of them are under separate management. The retail store and the mail-order house are across the street from each other. The Schwinn warehouse is located over 4 miles away.

Mr. ELSTON. Is there any similarity between the work performed in the mail-order house and the retail store, and in the departments that were excluded by the order of the National Labor Relations Board, excluded from voting in this election?

Mr. BARR. Many of the activities in the departments which were excluded are exactly the same or quite similar to many of the activities which were included. For example, the clerical activities in these various departments are practically the same, as an example of that.

Mr. ELSTON. When was the first time you had any knowledge at all that the Schwinn warehouse, the retail store, and the mail-order house were to be consolidated for voting purposes?

Mr. BARR. When we received the National Labor Relations Board's order of May 2 of this year.

Mr. ELSTON. Did you have any opportunity to argue the question about whether or not they should be consolidated?

Mr. BARR. The Labor Relations Board, acting through a trial examiner held a hearing in Chicago on April 29 and on May 1, a 2-day hearing. During the course of that hearing the company

presented to the Board its evidence, presented to the Board the facts which pointed out the sharp distinctions and differences in the activities of these two places.

For example, in the retail store they are on a 44-hour week basis. The Schwinn warehouse is on a 40-hour week basis. The retail store employees have a wholly separate wage structure, they are paid on a weekly wage basis. The Schwinn warehouse, on the other hand, the warehousing activity there, is on an hourly basis. There is no tie-in or similarity between the wage structure and the hours of those two places.

Mr. ELSTON. You said a moment ago something about the National Labor Relations Board holding that some information was secret—

Mr. BARR (interposing). That was the War Labor Board.

Mr. ELSTON. The War Labor Board?

Mr. BARR. That is right.

Mr. ELSTON. Well, what reason did they give for holding that information to be secret?

Mr. BARR. In the process of studying and analyzing wage rates from time to time, it is and has for many years been the practice of the company to talk with and compare notes with other employers in the vicinity as to the wage rates being paid for similar jobs, jobs involving similar types of work.

During the course of this investigation in the summer of 1942, the War Labor Board appointed as its representative to investigate into this wage question which then existed in Chicago, one Walter Fisher, who is a lawyer in Chicago. Mr. Fisher and his representatives went to other employers and secured from them wage rates which they were paying on jobs similar to Ward's jobs. However, when it came to the matter of a hearing, where this evidence of other wage rates was to be presented, the War Labor Board and its agent, Mr. Fisher, refused to disclose to us the source of their information. For example, they would come in and say, "Employer A is paying 70 cents an hour for such-and-such a job."

We would say, "Well, we have made a rather complete examination of this, and none of our competitors here have a 70-cent rate for that job. If you could tell us who employer A is, we would be happy to look into that; and if it is true, there would be no argument about it."

"No, we cannot disclose that, we cannot tell you who employer A is."

So we had no way of checking the accuracy, don't you see, of that statistical information.

Mr. ELSTON. You mean that the Board wouldn't even give you the information?

Mr. BARR. Yes; that is exactly what I mean. There was no opportunity, as we have said before here, of cross-examination—in fact, of any examination of these supposed facts upon which their order was based.

Mr. ELSTON. In other words, you had to be bound by their decision, but had no opportunity to know upon what they based their decision except their own word?

Mr. BARR. Very similar to that process, which has been known in the books as a star-chamber proceeding—no disclosure. As has just been called to my attention, the rate was put up without justification of the prevailing market rate, which we knew; and as I pointed out

before, it was imposed on Ward's alone and upon none of our competitors.

Mr. ELSTON. And was that in violation of the President's hold-the-line order?

Mr. BARR. Oh, it most certainly was. As I stated before, our rates then and our rates now are substantially more than 15 percent above the January 1941 level. As I think the record already discloses, there has never been, in this matter, any wage issue. It has been our practice from the beginning to accept the wage orders or wage recommendations of the War Labor Board, regardless of how unfair they may have been.

Mr. ELSTON. There is no wage controversy now between your company and the union, is there?

Mr. BARR. None whatsoever except insofar as I have mentioned that they have made this demand for a flat 10-cent increase.

Mr. ELSTON. Well, under the law you couldn't grant that, could you?

Mr. BARR. Under the law, we can grant no increase. The rates are entirely under governmental control.

Mr. ELSTON. Now it was asked yesterday, but I want to ask you—

Mr. BARR (interposing). Pardon me—in addition to that it has been made clear that this order of the War Labor Board which in some way or another formed the basis, apparently, for the seizure of the property, involved no change in wages rates whatsoever.

Mr. ELSTON. It was asked of another witness yesterday, but I will ask you too in order that we may be certain about it, was Montgomery Ward & Co. prevented at any time, by reason of the strike or otherwise, from filling any order that came in from any customer?

Mr. BARR. None whatsoever.

Mr. ELSTON. Did the business of the company increase or decrease after it came under Government control?

Mr. BARR. There was a substantial—approximately 50-percent I believe is the figure which has been mentioned—decrease in business during that period, and by "that period" I include the period of governmental control and also the period of the strike which immediately preceded it.

Mr. ELSTON. That would be between what dates?

Mr. BARR. Well, that would be beginning April 12. We will be glad to secure the exact figures upon the volume of business, and supply them to you if you would like them.

Mr. ELSTON. Well, I think it would be interesting to put them in the record.

Mr. BARR. Very well, we will supply them gladly.

Mr. ELSTON. Yesterday there was some testimony about the use of bayonets in the office of Mr. Avery, and since there is quite a difference of opinion between Mr. Avery's testimony and that of the Attorney General, I would like to have your version of the display of bayonets in Mr. Avery's office?

Mr. BARR. Yes, sir; I was there. The soldiers came into the office with the bayonets affixed to the end of their rifles. They entered through the door in a group. On the particular occasion that I have in mind there were four of them. However, they did not remain in a group, after entering the office, but deployed themselves in the room.

That is, there was one in this corner, and one on the other side, and so forth, and they stood with bayonets fixed, and at "charge" position.

Mr. ELSTON. Will you indicate that position?

Mr. BARR. You mean you would like me to illustrate it?

Mr. ELSTON. Indicate what you mean by a "charge" position, how they held their guns?

Mr. BARR. Well, I am not too well acquainted with military terms, but as I understand, it is described as at a "charge" position. They held them like this. [Indicating.]

Mr. ELSTON. That is with guns in almost a parallel position with the floor?

Mr. BARR. On about a 45° angle.

Mr. ELSTON. Where were those bayonets pointed?

Mr. BARR. Well, they were pointed at the end of the rifle. The rifle was held at about a 45° angle.

Mr. ELSTON. Toward whom were they pointed?

Mr. BARR. They were pointed toward the center of the room, and they would be pointed toward anyone who walked in front of them. They did not point their bayonets at any individual.

Mr. ELSTON. Now, there is some discrepancy also about the person who gave the order to remove from his office Mr. Avery. Will you tell us what you heard about that?

Mr. BARR. Yes; I will, and to be exactly sure that I am right, I will refer to some notes which were made at the time.

Mr. Biddle first turned to Mr. Taylor and said to Mr. Taylor, "Mr. Taylor, will you ask Major Webber to take Mr. Avery out of the plant, please?"

Mr. Taylor then turned to Mr. Avery and said, "On the advice of Mr. Biddle I ask you to leave the plant."

Then there was some further discussion in which Major Webber made the remark, "I must obey my order." Mr. Biddle became a bit irritated by the delay, and then shouted, or said in a loud voice, "What are you waiting for? Throw him out."

The CHAIRMAN. May I interrupt you at that point for a question, Mr. Elston?

Mr. ELSTON. Yes.

The CHAIRMAN. Who made those notes?

Mr. BARR. Mr. Ball, Mr. Avery, and myself were all in the room at the time. Sitting at the open door to an anteroom was Mr. John Branch, who serves in the capacity of secretary to Mr. Avery. As these things were said, Mr. Branch made a record of them in shorthand. They were immediately transcribed, that day, copies were submitted to both Mr. Ball and myself, and I believe also to you, Mr. Avery, and we then, while the matter was fresh in our minds, went over the notes which Mr. Branch had made, conforming them to our own recollection, and that record was then maintained, and the notes to which I have just referred in my testimony are those notes.

However, I might add that I independently recollect the truth and accuracy of the testimony which I have just given, independent of his notes.

The CHAIRMAN. All right, Mr. Elston.

Mr. ELSTON. I think that is all the questions I have.

The CHAIRMAN. Mr. Dewey has another question.

Mr. DEWEY. I wanted to clear up one little matter that probably you can answer, Mr. Barr.

At the time Mr. Cargill, the Assistant Postmaster General, was before the committee, there seemed to be some difference, at least between his mind and mine, as to what is a good delivery of a letter which has been prepaid and placed in the mails in the regular course by the sender. I was led to believe, from what Mr. Cargill said, that a letter delivered at the central post office, although addressed to Montgomery Ward in Chicago, would be good delivery. I speak now of first-class mail, probably bearing a 3-cent stamp, if that was sufficient for its weight. Could you tell me a little, if you please, of what are the circumstances under which Montgomery Ward has picked up mail at the Chicago post office, and matters surrounding that?

Mr. BARR. It is my understanding that it is the obligation of the post office to deliver mail to the addressee, as the envelope may be addressed. As we know, out in the rural districts that is done by rural mail carriers who drive down the road in a car—when I was a boy on a farm they were still doing it with a horse and carriage—and putting the mail into the box at the farmer's gateway.

In the cities we have carriers who go from house to house delivering the letters to the addressees. That, as I understand it, is the obligation of the post office.

At Chicago an arrangement was made several years ago between the post office and Ward's, whereby Ward's would relieve the post office of that delivery, and would itself send its trucks to the post office to pick up its bags of mail at various times during the day. There were dual factors involved in making that arrangement. The first was that it was an economy to the post office because they did not have the expense of making the delivery or deliveries to Ward's plant which otherwise they were obligated to do. Secondly, it was a convenience for Ward's because it got the mail to our place of business as we needed it to meet our own operating schedule.

That was an arrangement of convenience and in no way relieved the Post Office Department of any obligation which they had.

Mr. DEWEY. Did you at any time, as far as you can recollect, maintain a box in the Chicago post office to which mail would be delivered, such as general delivery box 1000?

Mr. BARR. No. As I understand it, this pick-up of mail by our trucks at the post office was not a box proposition. This involved sacks of mail which were picked up by the truck at the post-office dock, in other words, at the same dock where the post office's own trucks loaded; but the bags of mail of Ward's were merely placed in Ward's truck rather than the post office-truck. It was the same loading dock.

Mr. DEWEY. In other words, if, in ordinary times, you had served notice on the postmaster at Chicago that you would no longer send your trucks to pick up those sacks of mail, either the sacks of mail or the letters were so directed that they would ultimately have reached your mail-order house?

Mr. BARR. Oh yes; they would have been delivered to us by the post office in the normal course of deliveries.

Mr. DEWEY. And did you, or did some one during the period of the strike, serve notice on the post office that you would like to terminate the arrangement by which mail was picked up, and have the Government or the Post Office Department carry out their contract with the

addressor of the letter, and see that it reached you at your place of business to which the letter had originally been directed?

Mr. BARR. Yes, sir; that was done, and the detail of that is set forth in the affidavit of Mr. Higgins which I submitted to the committee yesterday.

Mr. DEWEY. Thank you.

The CHAIRMAN. Mr. Curtis?

Mr. CURTIS. Mr. Barr, earlier in your remarks you made reference to the union's charges that the company had refused to negotiate, and inferred or implied that those charges were not founded and were untrue. By "union" do you mean the union leadership, or the individual employees?

Mr. BARR. I mean the union leadership.

Mr. CURTIS. So far as you know, the individual workers in your plant made no such charges?

Mr. BARR. No; I recall no such charges being made by the employees themselves. These charges, in the main, have been published, in a paper called the Spotlight, which is published by this union weekly and generally distributed to the employees as they come to work, at the door of the plant, on Friday mornings, and it is devoted, week after week, to vicious, inflammatory libels against the company, repeatedly published in that manner, in an obvious attempt to cause dissension among the workers, to lead them to distrust Ward's and the members of Ward's management.

Mr. CURTIS. Who publishes that paper?

Mr. BARR. It is published by the union.

Mr. CURTIS. Are those charges signed, or are they published without signature?

Mr. BARR. They are published without signature. That is a one-sheet paper with mimeographing or some similar reproduction on both sides.

Mr. CURTIS. Is it distributed outside of the plant?

Mr. BARR. Yes; they are distributed on the sidewalk outside of the plant.

I might mention, in support of the remark which I made a moment ago, referring to the various repeated charges in this paper, or statements that were libelous, that last fall the company filed a suit in the Superior Court of Cook County in Chicago, against this union, to enjoin the publication of these libels, and for damages caused by their distribution, not only to the employees but to the customers of Ward's who are entering the place at that time. That suit is still pending in the court there. The case was argued last November, as I recall it, and it is still lying within the breast of the court, and the judge has taken no action on it either way.

Mr. AVERY. That is another "hot potato."

Mr. CURTIS. So far as you know that is published by the union leadership?

Mr. BARR. It is published by the union. It carries on its masthead the name of the union. I am not acquainted with the individuals who are responsible for it, but it is published by the union as a union organization.

Mr. CURTIS. Mr. Barr, it has been stated and restated about the company demanding an election to determine the question of representation in certain of the units. What was the date that the union finally did file a petition that could have been construed as a petition for an election?

Mr. BARR. The situation on that is just this. This question of representation was first raised in a meeting with the union on November 16, 1943. At that time we said to the union that we would be agreeable to the representation being decided either by an election held under the auspices of the National Labor Relations Board, or by a check of their membership cards against the list of employees.

The union refused to agree to either of those two methods. Although there is nothing in the statutes which would prevent an employer from petitioning the National Labor Relations Board for an election, the rules and regulations of the National Labor Relations Board have been such that an employer in a situation such as we faced at that time, could not petition the Labor Relations Board for an election. They would entertain a petition only by the union.

Therefore, there being no provision in the regulations for the filing of a petition by us, we wrote a letter to the Labor Relations Board, following the War Labor Board's action on January 15, and that letter was written on January 27, informing them of this representation question, and telling them that we certainly had no objection to them making that determination.

Later, on March 6, as I think I mentioned before, we wrote another letter which I read from yesterday, inviting them to make the determination and stating our willingness to cooperate to that end.

Mr. CURTIS. My question was—

Mr. BARR (interposing). The first paper of any kind which the union filed with the Labor Relations Board was a lengthy, argumentative brief, or petition, filed on February 14, I believe. That was not a petition for an election but was labeled by them as a petition for recertification, without an election.

Mr. CURTIS. Was it possible for the War Labor Board to construe that petition as a request for an election?

Mr. BARR. In fact they did so.

Mr. CURTIS. From your knowledge of the National Labor Relations Act, and the rules made by that Board, when would you say that they could have held an election had the National Labor Relations Board been disposed to bring it about, in an orderly procedure? How soon after February 14 could they have held the election?

Mr. BARR. Well, they held the election in a hurry after the Government got into possession of the plant and wanted to get out; they held it within a week then.

Mr. CURTIS. I understand that, but allowing a reasonable time for all of the pleadings and the filing of briefs, and so on?

Mr. BARR. Allowing a reasonable time, and permitting the parties an opportunity to make their arguments and file briefs as provided for under the rules, I would say that an election could reasonably have been held within 30 days after a petition was filed.

Mr. CURTIS. In other words, by the middle of March they could have held the election?

Mr. BARR. That is right, starting from February 14; they could have held it a long time before that if they had started.

Mr. CURTIS. I understand that. I believe the testimony of Mr. Reilly will support the fact that they could have held it by the middle of March, but they didn't, and apparently that was the only action that the Government took during the time they seized the plant, to hold the election and then turn the plant back?

Mr. BARR. Yes; and those agencies of the Government which seized the plant had nothing whatsoever to do with the holding of the election.

Mr. CURTIS. That is all.

The CHAIRMAN. Mr. Elston has another question.

Mr. ELSTON. Mr. Barr, I am still somewhat concerned about this star-chamber session of the War Labor Board, and I want to be sure that we get all the facts straight.

Mr. BARR. Yes.

Mr. ELSTON. It is my understanding that the Board made a finding against your company based upon information which the Board had obtained by some process or other, and which the Board would not disclose to your company?

Mr. BARR. That is right. This information was obtained by Mr. Walter Fisher, an appointee of the Board appointed for the purpose of making the investigation; and neither Mr. Fisher nor any other representative of the War Labor Board would make the source of that information known to us so that we could in any way examine it or meet it.

Mr. ELSTON. Do you know what kind of investigation he made?

Mr. BARR. No; I am acquainted with it only in a general way. I do not know the detail of what he did. He used a woman who was assigned to him, I believe, by the Bureau of Labor Statistics, a Miss Jones, who worked with him in doing much of the detail work.

This report was then submitted to the War Labor Board by Mr. Fisher. It was not a sworn document in any way, it was just a report, and no officials or representatives of the companies which had been investigated substantiated, by testimony under oath or in any way, that the figures were correct. The source of the material was not disclosed to us, but it was upon the basis of that that the War Labor Board made its 5-cent award, its 5-cent wage order; and as I pointed out before, Mr. Fisher's own report disclosed that in the retail store the wages which were then being paid by Ward's were the highest rates of any of the stores which had been examined.

Mr. ELSTON. Now, this wage increase that was ordered cost the company how much money?

Mr. BARR. It cost the company 5 cents an hour for all of the employees. How many dollars that was, I don't have that figure here, but I can supply it if you would like to have it.

Mr. ELSTON. At any rate, it was a very substantial figure?

Mr. BARR. A very substantial figure; yes, sir.

Mr. ELSTON. Let me ask you, did you request this information?

Mr. BARR. Oh, we not only requested it but we demanded it.

Mr. ELSTON. If you had been in a court in a criminal case, you would, of course, have been entitled to every particle of evidence introduced against you.

Mr. BARR. That is right.

Mr. ELSTON. If you were in a civil court, where somebody was suing you, you would be entitled to every bit of evidence offered against you.

Mr. BARR. That is right. This Board in none of the proceedings which we have had before it has accorded to the company, in any procedural way, due process of law.

Mr. ELSTON. Well, now, did you have any appeal from this decision of the War Labor Board?

Mr. BARR. Apparently not. As I understand the state of law now, the orders are considered as advice and the courts do not hear appeals on that; and although they are only advice, it seems that if the advice is not accepted the plant is taken over, without the benefit of court review. I think to a large extent that is the reason we are all here today.

Mr. CURTIS. Will you yield to a question?

Have you read Mr. Biddle's testimony?

Mr. BARR. Yes; I have.

Mr. CURTIS. Have you figured out his legal reason for taking the plant over? Was it to assure continued operation, or was it to enforce a War Labor Board rule?

Mr. BARR. It is impossible for me to determine that from Mr. Biddle's testimony. He jumped all over the lot, so far as I can determine.

Mr. ELSTON. Do you know whether it is customary for the War Labor Board to carry on these star-chamber sessions and introduce evidence against people and not give them an opportunity to find out the source of the information?

Mr. BARR. We have had a number of these meetings, so-called hearings, before the War Labor Board. In none of them have any witnesses been placed under oath or other penalty for perjury. That is the customary procedure with them.

(Discussion off the record.)

Mr. BARR. It has just been called to my attention, and if I might just add this comment to my previous answer with respect to the Board's order in the fall of 1942, increasing the wage rates at Chicago 5 cents an hour, that although the Board found that the wage rates in the retail store were more than 15 percent higher than they had been in January of 1941, and although they found that the rates in the store were the highest among our competitors, that is, our rates were higher than those paid by any of the competitors which they studied or looked into, they nevertheless ordered an increase of 5 cents an hour in the store because, they said, in substance, that they felt the 5 cents should be ordered in the mail-order house across the street, and although there was no reason in the figures for making any increase in the store, that they would order that because they felt that the store employees might be dissatisfied if they found the workers on the other side of the street getting an increase and they not getting it; and that was the only reason, to the best of my recollection, that the War Labor Board ever assigned for that.

Mr. ELSTON. I am not so much interested in the reasons for this order as I am in the type of proceedings that are carried on by this agency of the Government. In my opinion, it is in total defiance of Congress. Section 7 of the War Labor Disputes Act provides in no uncertain or unmistakable terms that the hearing must be a public

hearing, and that both parties shall be given full notice and opportunity to be heard, indicating that Congress intended the same kind of proceeding before the War Labor Board as takes place in court, that both parties shall have the opportunity not only to be heard but to know what evidence is being offered against them—and that was not done in your case?

Mr. BARR. It has not been done in any case which we have had before them.

Mr. ELSTON. That is all.

The CHAIRMAN. Mr. Barr, why inject this so-called star-chamber matter into this case this morning when, according to all the previous testimony we have had, Montgomery Ward never raised any question about the wages?

Mr. BARR. Well, I mention that because I have assumed that all the members of your committee, sir, have been interested in learning of the facts pertaining to the procedures of the War Labor Board leading up to the order, which is at the basis of this entire matter which you are investigating.

The CHAIRMAN. Ward's didn't object to the wage increase?

Mr. BARR. Ward's put the wage increase into effect.

The CHAIRMAN. And they didn't object to it?

Mr. BARR. Oh, Ward's objected, and that is a matter of public record, that the increase was unjustified, that there were no facts submitted to justify the increase, and that it was an illegal requirement of the Board—but Ward's accepted it.

The CHAIRMAN. If I remember Mr. Avery's testimony yesterday correctly, he said that at no time had there been any controversy over the wages.

Mr. BARR. That is right, and there has been none here.

The CHAIRMAN. And you accept it now?

Mr. BARR. It has been in effect continuously since that time. Now, the Board has made no wage order against us at this time.

The CHAIRMAN. I understand that, but the controversy which resulted in the seizure of the Montgomery Ward property was not over wages, was it?

Mr. BARR. No; but it involved the same procedure and the same proceedings.

The CHAIRMAN. But it did not involve wages?

Mr. BARR. No; no wage issue whatsoever.

The CHAIRMAN. And you do not raise any question about that now, except in an effort to smear the War Labor Board?

Mr. ELSTON. Mr. Chairman, I don't share that view at all.

The CHAIRMAN. You are entitled to your opinion.

Mr. ELSTON. Mr. Barr was responding to my questions.

The CHAIRMAN. And he is now responding to mine.

Mr. BARR. We are here to give you, in any way we can, the facts of this situation.

The CHAIRMAN. What I am trying to find out is why you are dragging in a statement—

Mr. BARR (interposing). Those facts speak for themselves.

The CHAIRMAN (continuing). About star-chamber proceedings relating to something over which you didn't make any controversy?

Mr. BARR. The star-chamber proceedings relate to all aspects of the controversy.

The CHAIRMAN. You contend it is all star chamber?

Mr. BARR. I contend this Board has never held a legal hearing in any of these proceedings, and I said that three times.

The CHAIRMAN. If you objected to the wages that they required you to put into effect, you could have refused to follow that recommendation just like you did the recommendation as to maintenance of membership, couldn't you?

Mr. BARR. Yes; we could have, but you are not recommending that we should, are you?

The CHAIRMAN. No; I am not recommending that you refuse to follow any order of the Board. As a matter of fact, I think Montgomery Ward made a mistake in refusing to follow the order of the President of the United States.

Mr. BARR. Even though it was an illegal order and issued without authority?

The CHAIRMAN. Yes.

Mr. BARR. And it is your view that a citizen should follow an illegal order?

The CHAIRMAN. Yes; I think he should test it in the courts.

Mr. BARR. Yes; so do I.

The CHAIRMAN. But I don't think an order—

Mr. BARR. (interposing). That is what we have been trying to do for 2 years.

The CHAIRMAN. Let me finish my statement. I don't think that an order of the President of the United States, issued under the color of the authority of his office, should be resisted by any citizen by force, that he ought to carry it into court.

Mr. BARR. There was no resistance by force in this case, sir, and the ignoring of an illegal order issued without authority appeared to be the only way that the legal rights to which you refer could be preserved.

The CHAIRMAN. Well, I will discuss that question with the legal gentleman of the trio here.

Mr. BARR. Very well.

The CHAIRMAN. But I think there was resistance by force, from my point of view. At least, Mr. Avery very deliberately, I think—and I think he agreed to that statement—required the Government to use force to get him out of that plant.

Mr. BARR. There was no resistance by force.

The CHAIRMAN. Well, you may not call it resistance, but if a man refuses a request to leave the plant after the Government has taken possession, what do you call it?

Mr. BARR. Well, certainly no representatives of Ward's, Mr. Avery or anybody else, exercised any force or called upon any force in resistance of this order. The force was on the other side.

The CHAIRMAN. You have a security force in that plant, haven't you?

Mr. BARR. A security force?

The CHAIRMAN. Yes.

Mr. BARR. What do you mean?

The CHAIRMAN. A uniformed guard security force.

Mr. BARR. We have a few protection people there, stationed to protect the property.

The CHAIRMAN. They are armed, are they not?

Mr. BARR. No, they are not. They are there merely to protect the property against thievery.

The CHAIRMAN. How many do you have?

Mr. BARR. I don't know the exact number. This property is over a half a mile long, and eight stories high. There aren't many of them, there are a few of them.

The CHAIRMAN. You are in charge of the employee relations. Tell us how many you have got.

Mr. BARR. I don't know exactly.

The CHAIRMAN. Give us your best estimate.

Mr. BARR. I would say approximately seven or eight uniformed people throughout the entire property.

The CHAIRMAN. You had as many there as the Attorney General had deputy marshals, didn't you?

Mr. BARR. Oh, yes; there were probably as many throughout the entire properties as there were marshals.

The CHAIRMAN. And if the deputy marshals had attempted to eject Mr. Avery, you had enough guards there to offset that force?

Mr. BARR. That is an absurd implication, and unfair. None of these protection people, who were stationed throughout the plant for the sole purpose of protecting the property against thievery, and that sort of thing, were at the place where these marshals were located. So far as I know, none of them even knew they were there, and nothing was ever done or said by anyone which would lead to the implication which you now throw out.

The CHAIRMAN. Well, they were available and subject to your orders, or Mr. Avery's orders, weren't they?

Mr. AVERY. Not at all.

The CHAIRMAN. Whose orders are they subject to?

Mr. AVERY. The local management. The implication is outrageous.

The CHAIRMAN. You don't contend that anybody in that plant wasn't subject to your orders, do you?

Mr. AVERY. I want to state that indirectly, all may be said to be. Factually, which you seem to want to avoid, they are under the immediate direction of the local management. I am over the entire 650 stores. Do you think by that that I can summon them in to my personal defense?

The CHAIRMAN. Exactly. I do contend that, and would be glad to have your statement; do you contend that you could not?

Mr. AVERY. I think this is a great waste of time.

The CHAIRMAN. Do you contend you couldn't call them in?

Mr. AVERY. I contend it is an extraordinary waste of time to discuss such a phase of the matter while we are engaged in an earnest endeavor to disclose facts.

The CHAIRMAN. You are entitled to that opinion.

Mr. AVERY. I have it strongly.

The CHAIRMAN. I would like to have you answer my question: Do you contend that you could not have ordered them in there to resist the marshals?

Mr. BARR. No thought was ever given to ordering them in, and they were not ordered in.

Mr. AVERY. I refuse to answer.

The CHAIRMAN. All right, Mr. Avery, if you refuse to answer, I won't try to make you answer.

Now, Mr. Barr, you are the labor relations manager; is that correct?

Mr. BARR. That is right.

The CHAIRMAN. You first came with the company in 1933, did you say?

Mr. BARR. That is right.

The CHAIRMAN. And you stayed how long?

Mr. BARR. To February 1, 1935.

The CHAIRMAN. Where did you go from there?

Mr. BARR. Gary, Ind.

The CHAIRMAN. With what company?

Mr. BARR. I reentered the general practice of law as a junior partner in the same firm with which I had been associated before I came with Ward's in 1933.

The CHAIRMAN. You came back to them in 1938?

Mr. BARR. October 1, 1938.

The CHAIRMAN. And you have been there since?

Mr. BARR. That is right.

The CHAIRMAN. Have you made any effort to acquaint yourself with the practices of labor relations experts in the various industries of the country?

Mr. BARR. Oh, I have some general knowledge of that.

The CHAIRMAN. Are you familiar with a study that was made in the General Electric's Hawthorne plant in Chicago, of the relations between management and labor?

Mr. BARR. Just casually, I have heard of that report. I am not intimately enough acquainted with that particular report to make any comment on it.

The CHAIRMAN. Have you made any effort, Mr. Barr, as the labor relations expert of this great company, to solve this problem of friction between management and the employees?

Mr. BARR. There is no friction between the management and the employees in this plant. The only friction is between the management and these unioners, as they were referred to here yesterday. We have no friction with our employees.

The CHAIRMAN. To what, then, do you attribute the heavy turn-over in employment in that plant?

Mr. BARR. There are many factors that contribute to that, sir. It is generally characteristic of the industry. The chief factors in that are the conditions which have been brought about by the war situation, the chief thing being employees leaving our employ to go to higher-paid defense jobs. Several thousand, of course, have gone directly into the service.

The CHAIRMAN. What was the turn-over during the life of this contract?

Mr. BARR. I don't have the exact figures on that, sir.

The CHAIRMAN. Can you give us the approximate figures, or can you, Mr. Avery?

Mr. AVERY. I think we had to employ—this is from memory but it will indicate it pretty well, and it was stated in the chairman's letter in the annual report—I think it was necessary to employ 157,000 people to maintain a staff of less than 70,000. That has nothing to do with the war, that is a general condition throughout the country, centered very heavily in Ward's—

The CHAIRMAN (interposing). Let's confine it to the properties that were seized; can you give me the figures on that?

Mr. AVERY. That of course would be utterly impossible because they are general figures; but if you are earnest in wanting to find the conditions of labor, I imagine what I have stated to you will indicate that these people we get are temporary, in and out, inexperienced, and it is a general flow that is common to many concerns in Chicago and is getting worse daily. We are quite unable to get the number we want.

The CHAIRMAN. I understand that there is general trouble of that sort everywhere, Mr. Avery, but what I am trying to get at from Mr. Barr, if he can tell me, is what the turn-over was in the properties involved in this contract?

Mr. BARR. I cannot give you the specific figure on that.

The CHAIRMAN. Can you give me any indication?

Mr. BARR. I can give you the indication that it was relatively high.

The CHAIRMAN. Was it as much as 80 percent?

Mr. BARR. During what period?

The CHAIRMAN. The period of the contract.

Mr. BARR. I cannot give you the exact figures.

Mr. AVERY. Very heavy indeed is almost as much as we can say.

The CHAIRMAN. Didn't you contend that there had been a very heavy turn-over, and wasn't that the reason, or one of the reasons why you said that the union did not represent the majority of the employees?

Mr. BARR. No. There had been a heavy turn-over, and that isn't a contention, it is a fact. The point on the representation of the employees was that in November when the meeting was held, less than 20 percent of the employees on the pay roll were having their dues checked off from their wages under the plan proposed by the War Labor Board the year before, which indicated to us or gave rise in our minds to a grave doubt—less than 20 percent—that the union did represent a majority. Now there had been a heavy turn-over during this year.

The CHAIRMAN. Now, Mr. Barr, Mr. Avery stated yesterday that one of his objections to the maintenance-of-membership provision included in that contract was that it would lead to a closed shop.

Mr. BARR. Yes, sir.

The CHAIRMAN. The implication of the statement you have just made is that it led in the other direction?

Mr. BARR. Not at all; I think you are misinterpreting that. The condition that the contention is over is the requirement of making union membership a requirement of employment. Now that may be done in various degrees. Under the full, old-fashioned closed shop, all of the employees in a plant not only must be union members, but the employer cannot employ a new man unless he is previously a union member.

The CHAIRMAN. That is a union shop.

Mr. BARR. No; that is a closed shop.

The CHAIRMAN. Is that all you know about the term "union shop" and the term "closed shop"?

Mr. BARR. Sir?

The CHAIRMAN. Is that all you know about the definition of "closed shop" and "union shop"?

Mr. BARR. Is what all I know about it?

The CHAIRMAN. You have just said that—

Mr. AVERY (interposing). I think that remark is unwarranted and offensive.

The CHAIRMAN. Let me talk to him.

Mr. AVERY. I don't think a man in your position should sit here and go into that line of questioning. You are the chairman of a dignified board.

The CHAIRMAN. You and I may not agree about this, but I am examining Mr. Barr.

Mr. AVERY. I understand that.

The CHAIRMAN. I am trying to find out what he knows about labor relations.

Mr. AVERY. You are trying to assail his information on a subject on which he works every day of his life.

The CHAIRMAN. I am trying to test his information.

Mr. AVERY. I don't think this is much of an examination.

The CHAIRMAN. Will you give me your definition of a closed shop, Mr. Barr?

Mr. BARR. In its narrowest sense a closed shop is a requirement under which an employer can employ no one except union members, and all of the employees in the plant must be union members.

The CHAIRMAN. All right. What is your definition of a union shop?

Mr. BARR. That is the next step down in the degree of requirement. Under a union shop an employer may employ people who are not union members, but they must join the union in order to retain their jobs and continue in their employment, within a specified time after they are employed—10, 20, or 30 days, and all of the employees in the plant must join the union.

The CHAIRMAN. That is right; that is my understanding of it also. Now, then, neither one of those requirements is contained—

Mr. AVERY (interposing). Are you going to apologize for insulting the man?

The CHAIRMAN. No, sir; I didn't insult him. If you will read the record tomorrow when it is available to you, you will find that his definition doesn't coincide with the statement he made previously.

Mr. BARR. Oh, yes, it does; it exactly coincides with it.

The CHAIRMAN. We won't take up the time of the committee in arguing that.

Mr. AVERY. I should say not.

The CHAIRMAN. The maintenance of membership requirement does not contain the requirement that they be members of the union or that they join the union, does it?

Mr. BARR. It involves exactly the same requirement in that as to these employees who are members of the union, union membership is made a condition of employment, and that is the basis of the union shop, the closed shop, and all these other variations or forms of closed shop. In other words, the basic element of the closed shop and the union shop in all of these requirements is that union membership be made a condition of employment.

Under the maintenance of membership, that does not apply to all employees as it does under the strict closed shop but it applies to a part of them, and therefore it involves exactly the same principle. As to those employees, they must be union members or they can't work.

The CHAIRMAN. Now, under the maintenance of membership plan as proposed in this contract, every member of that union had 15 days to resign, didn't he?

Mr. BARR. Theoretically, yes.

The CHAIRMAN. Montgomery Ward had a right to employ nonunion members, did they not?

Mr. BARR. That is right.

The CHAIRMAN. Then that is not a closed shop, is it?

Mr. BARR. It is a compromise form of the closed shop because as to those employees who did join the union they had to be union members for the full period of the contract in order to retain their jobs. Union membership was a condition of employment as to those people, and to that extent it was a closed shop. The shop was closed to them unless they were union members.

The CHAIRMAN. Exactly, after they had agreed voluntarily to that contract.

Mr. BARR. That is right.

The CHAIRMAN. You are a lawyer, and you believe in people keeping their contracts, don't you?

Mr. BARR. I also believe in the liberty of people, and that they should be free to join a union, free not to join a union, free to resign from a union if they came into disagreement with its policies.

The CHAIRMAN. Not free to resign after they had made a contract not to. Do you believe in that; do you believe they should be free to break their contract?

Mr. BARR. I am not talking about that; there was no contract here that those employees stay in the union for any specific time. That is the contract which was imposed by the War Labor Board. These employees entered into no such contract.

The CHAIRMAN. That is what I am talking about.

Mr. AVERY. It wasn't a contract.

The CHAIRMAN. They had 15 days to get out, didn't they?

Mr. BARR. That is right.

The CHAIRMAN. Therefore, if they didn't get out they entered into an agreement to stay in for the life of the contract, did they not?

Mr. BARR. That was not a contract, that was a requirement imposed by the War Labor Board; the company never agreed to that.

The CHAIRMAN. But they had an opportunity to get out?

Mr. BARR. Theoretically they did. In practical effect that does not work out the way it appears on paper, because of the many coercions and misrepresentations which are placed on the employees by the union representatives.

The CHAIRMAN. I understand your contentions about that.

Mr. BARR. That is a fact.

The CHAIRMAN. I am just trying to get at the facts.

Mr. BARR. Well, that is a fact.

The CHAIRMAN. Well, it may be or it may not be.

Mr. AVERY. You don't seem to want the facts.

The CHAIRMAN. But they did have an opportunity to get out?

Mr. BARR. As I said before, theoretically they did.

The CHAIRMAN. All right, we will take your construction of it. Many of them didn't get out?

Mr. BARR. That is right.

The CHAIRMAN. They also had an opportunity to revoke the check-off, did they not?

Mr. BARR. That is right.

The CHAIRMAN. And many of them took advantage of that?

Mr. BARR. I don't know whether many of them did or not.

The CHAIRMAN. You said that there were 20 percent of them only who were on check-off at the end of the contract?

Mr. BARR. That is right, but that did not arise necessarily from the revocation of check-offs. In fact, as far as I know, there were very, very few, if any, of those.

The CHAIRMAN. Then there was an 80-percent turn-over in the union?

Mr. BARR. Oh, no; it was never 100 percent to start with.

The CHAIRMAN. What percent was it?

Mr. BARR. Between 30 and 40 percent.

The CHAIRMAN. Between 30 and 40 percent?

Mr. BARR. That is right.

The CHAIRMAN. Then you based your view that the union had lost control of the employees on a reduction from 30 percent down to 20 percent?

Mr. BARR. We based it on the fact that less than 20 percent were on the check-off rolls.

The CHAIRMAN. You have just said there never was more than 30 percent?

Mr. BARR. Around 35 percent, approximately.

The CHAIRMAN. Who were having check-offs made?

Mr. BARR. That is right.

The CHAIRMAN. As a matter of fact the election did demonstrate that the union had a majority, didn't it?

Mr. BARR. Not a majority of members, no sir; it demonstrated that the majority of those employees who voted, voted for the union as their bargaining representative.

The CHAIRMAN. Wasn't that a majority of those qualified to vote?

Mr. BARR. We were quite well convinced that as far as the retail store was concerned, for example, it was not, because just 2 weeks previously 80 percent of the retail store had repudiated the union by coming through the union's picket line.

The CHAIRMAN. The question I asked was whether a majority of those qualified to vote, didn't vote for the union?

Mr. BARR. In this gerrymandering election; yes.

The CHAIRMAN. It is your contention, isn't it, or the contention of the company, that the membership in the union declined during the year when the contract was in existence?

Mr. BARR. I don't understand that.

The CHAIRMAN. I say, isn't it the contention of Ward's that the membership in this union declined during the year that the contract was in existence?

Mr. BARR. That is indicated by the check-off records, that it steadily declined.

The CHAIRMAN. Then the implication that this type of agreement leads to a closed shop is erroneous; isn't it?

Mr. BARR. No; that does not follow at all. You are overlooking one very important factor and that is that the tactics of this union during this year were such as to turn many employees against it, and

it would be reasonably expected to do so by its vicious, libelous attacks upon the employer, for example.

The CHAIRMAN. Do you say now that the membership in the union did decline during that year?

Mr. BARR. As indicated by the check-off records it did; yes, sir.

The CHAIRMAN. Well, you have just said that its activities drove some of the members away?

Mr. BARR. That is a reasonable conclusion to be drawn from the facts.

The CHAIRMAN. Is it your opinion, Mr. Barr, that membership in the union did decline during that year?

Mr. BARR. Yes; that is my own personal feeling in the matter, but I point to the check-off records as the only evidence available to us of that fact.

The CHAIRMAN. Now, if that type of union organization was leading to a closed shop, the membership would have increased, would it not?

Mr. BARR. Not necessarily, because there are other factors which enter into that picture. The maintenance of membership, you understand, is the first step toward the closed shop. It is the first step which operates to destroy this fundamental liberty of the employees to make their own free choice.

The CHAIRMAN. I don't agree with your statement.

Mr. BARR. It is a compromise form, the attitude of the unions being, "We will take maintenance of membership now with the idea and the hope and the expectation of getting the union shop and the closed shop tomorrow." That is the first step down that road, sir.

The CHAIRMAN. As a matter of fact, don't you know that that is not the point of view of any union leader?

Mr. BARR. I am not qualified to give you the opinion of union leaders.

The CHAIRMAN. Well, are you familiar with the conference that led up to the establishment of the War Labor Board, in which the unions contended that they must have either a closed shop or a union shop?

Mr. BARR. Oh, yes; that is right.

The CHAIRMAN. And in every hearing the War Labor Board has had, practically, they have asked either for a closed shop or a union shop?

Mr. BARR. That is right.

The CHAIRMAN. They don't consider, so far as I know, that the maintenance of membership is any advantage to them.

Mr. BARR. To whose advantage is it?

Mr. AVERY. No answer.

The CHAIRMAN. They consider that it is a compromise.

Mr. BARR. That is exactly what it is, an immoral compromise of a very silent principle.

The CHAIRMAN. It is better than a nonunion shop, but it doesn't satisfy their demands.

Mr. BARR. No; but they accept it for today, knowing that that is the first step leading to what they really want, and that they will get that tomorrow.

The CHAIRMAN. Don't you think they have accepted it in an effort to be cooperative in this war situation?

Mr. BARR. That has not been their motive at all, in my opinion.

The CHAIRMAN. You don't think so?

Mr. BARR. No, sir; I think they have accepted it in their own selfish interest.

The CHAIRMAN. Now, the reference to this question of mail delivery about which Mr. Dewey asked you, you know, as a citizen, that it is the custom of the Post Office Department to deliver your mail where you want it delivered, isn't that right?

Mr. BARR. That is right.

The CHAIRMAN. If you live in Chicago and have a residence address, but prefer to have your mail put in a lock box, they do it?

Mr. BARR. That is right.

The CHAIRMAN. If you—

Mr. BARR (interposing). And I also have the privilege of changing that at any time; if I decide to discontinue the lock box, they will then perform their obligation and deliver it to my home.

The CHAIRMAN. Or if you want all the mail delivered to your office at the Montgomery Ward building, they will deliver it there?

Mr. BARR. That is right.

The CHAIRMAN. As you have already stated, they delivered the Montgomery Ward mail in accordance with the request of the company up to the time of the strike?

Mr. BARR. That is right.

The CHAIRMAN. Suppose they had been delivering the mail with their own trucks to the Montgomery Ward plant at the time of the strike, and had discontinued their deliveries?

Mr. BARR. That is exactly what they did in this Portland experience in 1941.

The CHAIRMAN. Then you would have said they were changing the rules of the game during the strike, wouldn't you?

Mr. BARR. They were failing to perform their obligation during the period of the strike, that is what I would say.

The CHAIRMAN. Well, they changed the rules of the game during the strike?

Mr. BARR. They failed to perform their obligation during the strike, because the rules of the game are that they are obligated to deliver the mail to the addressee, and if they fail to do that they fail to perform their obligation.

The CHAIRMAN. They did continue to give the same service during the strike that they had given before, didn't they?

Mr. BARR. No; they did not.

The CHAIRMAN. Well, isn't it a fact—

Mr. BARR (interposing). Before the strike—to amplify that—before the strike, for example, and for 30 years before the strike, they had maintained this distributing unit in the plant. They did not continue to give that service during the strike.

The CHAIRMAN. A part of that arrangement was that the Montgomery Ward Co. should furnish the transportation from the plant to the railroad station or the Chicago office, was it not, the Chicago post office?

Mr. BARR. The company continued to furnish that transportation during the strike. I don't see your point. This mail moved out of the plant continuously during the strike.

The CHAIRMAN. As a matter of fact, the Motor Express Co. employees refused to go through the picket line?

Mr. BARR. That is right, but other means of transportation were substituted.

The CHAIRMAN. It wasn't a part of the arrangement that other means should be used?

Mr. BARR. Oh, yes; the means were always left to us; the post office never interfered, throughout the history of this thing, with our choice of transportation.

The CHAIRMAN. But it had to be acceptable to the Post Office Department?

Mr. BARR. Yes; it has to be acceptable to the Post Office Department, but we used means of transportation during the course of the strike; for example, boxcar via the Milwaukee Railroad, which had been acceptable to the Post Office Department. As I pointed out yesterday, there were 4,500, approximately, sacks of mail in the place when the strike was called. Those were moved, with full knowledge to and without any objection by the post office, by boxcar, and mail continued to be moved in that fashion. There was no objection by the post office as to the means of transportation.

The CHAIRMAN. As soon as the Motor Express Co. resumed its service, the Post Office Department put these employees back; isn't that right?

Mr. BARR. Which is just another way of saying that as soon as the strike was over, the Post Office Department put its employees back.

The CHAIRMAN. The statement I made is true?

Mr. BARR. When the strike was over, they came back.

The CHAIRMAN. When the Motor Express Co. came back?

Mr. BARR. The Motor Express Co. came back when the strike was over.

The CHAIRMAN. Two and two still make four, doesn't it?

Now, Mr. Barr, there has been some testimony here about the business of Montgomery Ward during this strike. As I recall it, Mr. Avery testified that the business fell off 35 to 40 percent. Somebody has handed me a clipping from this morning's Washington Post, an A. P. dispatch dated Chicago, June 6, and it reads as follows:

Montgomery Ward & Co. reported today sales for the month of May 1944 amounting to \$50,160,388, as compared with \$54,098,702 for the same month last year. For the 4 months ended May 31, 1944, sales amounted to \$189,306,088, as compared with \$208,390,486 for the corresponding period last year.

According to my figures, that is a reduction of about 10 percent.

Mr. BARR. You understand those are all company figures, and not confined to the Chicago properties.

The CHAIRMAN. That is right.

Now, Mr. Barr, the real situation in this case is that Ward's will not agree, and has no intention of agreeing, to a contract that has a maintenance-of-membership provision, a union or a closed-shop arrangement?

Mr. BARR. Not unless that becomes the law of the land, we have no intention of doing so. If it becomes the law of this country that employees must be union members before they can work, Ward's will be happy to comply.

The CHAIRMAN. Then what weight do you give to section 7 of the War Labor Disputes Act, in which it directs the War Labor Board to settle disputes?

Mr. BARR. Well, I also, in reading section 7 of the War Labor Disputes Act, read that section which provides that the orders of the War Labor Board must conform to the provisions of the National Labor Relations Act and other provisions of law. In my opinion, the order of the War Labor Board making maintenance of membership a requirement, is not in conformity with the provisions of the National Labor Relations Act.

The CHAIRMAN. In what respect?

Mr. BARR. It violates section 8 (3) of that act, which makes it illegal to discriminate between employees for the purpose of either encouraging or discouraging union membership.

The CHAIRMAN. And because you construe this provision to encourage union membership, you say it is a violation?

Mr. BARR. Yes.

The CHAIRMAN. Yet you have just testified that the union membership declined during that year.

Mr. BARR. The purpose of the provision is to encourage union membership.

The CHAIRMAN. That is your opinion?

Mr. BARR. That is my opinion; yes, sir.

The CHAIRMAN. But it didn't work out that way in Ward's plant?

Mr. BARR. And we have tried to get an orderly, judicial decision on that point. We promptly went to the district court, the Federal district court here in the District of Columbia, upon the issuance of this order, to have the court determine whether or not that was right or wrong. So far we have been unable to get an orderly decision of that question. Instead, the Government, without the benefit of court determination, moved in with force, as has been well illustrated.

The CHAIRMAN. Of course, if you study the history of the War Labor Disputes Act, you would know that Congress deliberately refrained from making the orders of the War Labor Board enforceable in court.

Mr. BARR. There is no express provision in the act for court review.

The CHAIRMAN. But the debate in the Senate indicated very clearly, as I recall it, that that plan was considered and rejected.

Mr. BARR. It is my understanding that it was the opinion of the Senators, during that debate—and I have read that record—that in the event an order of the War Labor Board violated the rights of any person, that the courts were open to review that violation, or that denial of fundamental rights.

The CHAIRMAN. Well, there is one way you could have gotten court review, and that was by bringing an injunction against Mr. Taylor after he got possession.

Mr. BARR. I think that you might well address that question, sir, to Mr. Ball, who is in charge of the legal end of this thing.

The CHAIRMAN. All right.

Now, in your testimony yesterday, at the top of page 2 of your prepared statement, you say:

When Ward's again refused the same requirement in 1944, the President used the Army to seize Ward's properties.

Mr. BARR. Yes, sir.

The CHAIRMAN. Isn't it fair to say that the only reason the Army was used was because Mr. Avery refused to recognize the authority of the Executive order issued by the President?

Mr. BARR. No, I don't understand that at all.

The CHAIRMAN. Well—

Mr. BARR (interposing). Ward's had refused this illegal requirement of the War Labor Board's order, and as a result of that refusal the Secretary of Commerce came in with the Army to do what he did.

The CHAIRMAN. He didn't come in with the Army, he brought the Army in after the refusal of Mr. Avery to recognize the authority of the Executive order.

Mr. BARR. Well, Mr. Avery testified, I think, quite accurately yesterday to the progress of events during those 2 days.

The CHAIRMAN. And the real reason as to why the Army was called in was because Mr. Avery couldn't be made to recognize the authority of that order in any other way.

Mr. BARR. No; I think the real reason the Army was brought in was to attempt to carry out an illegal, unconstitutional order of the President.

The CHAIRMAN. We understand, of course, that that is your point of view about it.

Mr. BARR. Well, that is what I am giving you.

The CHAIRMAN. But the fact is—

Mr. BARR (interposing). It certainly wasn't the only way it could have been done. The courts of Chicago were open, performing their normal functions, each day and each hour of the day. If the representatives, Mr. Biddle and his associates, really felt that this was an authoritative order, the courts were open for them to go and seek enforcement of it.

The CHAIRMAN. I am not questioning the good faith of Mr. Avery's beliefs; I think he was thoroughly sincere in his beliefs, but the Government couldn't get into court until they had possession.

Mr. BARR. Oh, I would not agree with that statement.

The CHAIRMAN. You don't agree with that?

Mr. BARR. Not at all.

The CHAIRMAN. What sort of proceeding could they have brought before they had possession?

Mr. BARR. Well, the first one that would come to my mind would be a mandatory injunction, which Judge Goldsborough of the Federal district court here in the District expressly said, in his opinion, was the most plausible way to do that.

The CHAIRMAN. Hasn't he been overruled by the circuit court of appeals?

Mr. BARR. Not to my knowledge.

The CHAIRMAN. You haven't read that decision—

Mr. BARR (interposing). Oh, yes; but that wasn't in this case.

The CHAIRMAN. Certainly it wasn't in this case, but the application of it is not limited to the case which was on trial.

Mr. BARR. I will reserve fuller discussion of that for Mr. Ball, as I say, because that is a strictly legal question. However, we must keep in mind that the decision to which you refer was with reference to an order of the War Labor Board issued before the passage of the War Labor Disputes Act.

The CHAIRMAN. All right.

Now, to get off of that subject, in your prepared statement, on pages 5 and 6, you charge in effect that the National Labor Relations Board was guilty of gerrymandering the bargaining units.

Mr. BARR. I charge exactly that.

The CHAIRMAN. As a matter of fact, under the National Labor Relations Act, if the National Labor Relations Board wants to do it, they could put all of Ward's properties and all of Ward's employees in one unit, could they not?

Mr. BARR. They could issue such an order. Whether such an order would be sound or be upheld by the courts is another question.

The CHAIRMAN. Section 9 (3) gives them absolute authority to determine the appropriate unit—

Mr. BARR (interposing). No, not absolute authority.

The CHAIRMAN. What is it limited to?

Mr. BARR. It is limited to court review if their order is improper.

The CHAIRMAN. You say the right of the Board to select the appropriate unit is subject to court review?

Mr. BARR. Oh, yes. I don't mean by that that there is any direct appeal from their order establishing the unit, but the Supreme Court has clearly held that that question may be reviewed, in the event an employer disregards the order, and then if a charge of unfair labor practice for failing to bargain in accordance with the order is brought, the propriety of the unit originally established by the Board is one of the elements of the case and will be reviewed by the Court.

The CHAIRMAN. The only limit in the law is that they must not go beyond the employees of one employer; isn't that correct?

Mr. BARR. Well, the law speaks for itself; I don't have a copy of it here.

The CHAIRMAN. Well, I happen to know about that, because I offered that amendment myself, and that is the only limit in the act itself.

Mr. BARR. No; that is not the only limit in the act itself. Their order must be based, as I understand it, upon the primary principle affecting the purposes of collective bargaining, and it certainly is a part of the fundamental law of our land that no executive agency can act arbitrarily and unreasonably in defiance of the law.

The CHAIRMAN. You testified on page 12 of your prepared statement yesterday that on January 15 the War Labor Board ordered the expired contract extended until the union's rights could be determined?

Mr. BARR. Yes, sir.

The CHAIRMAN. That is not an accurate statement, is it?

Mr. BARR. I think it is exactly so. They ordered that the terms and conditions of the old contract should continue to govern for a certain period.

The CHAIRMAN. The terms and conditions, but not the contract.

Mr. BARR. Well, what is the contract separate from its terms and conditions? Isn't that one and the same thing?

The CHAIRMAN. There is this distinction, they didn't order Ward's to sign a contract extending the time.

Mr. BARR. No, but they ordered that the provisions be continued. That is just what I said, that the expired contract be extended.

The CHAIRMAN. You said "extended the contract."

Mr. BARR. That is exactly what they did.

The CHAIRMAN. I would construe that to be a temporary contract for 30 days.

Mr. BARR. I think you are quibbling over words.

The CHAIRMAN. We seem to be doing a lot of quibbling in this case, on both sides.

All right, now we will take up Mr. Ball. Mr. Clark?

Mr. CLARK. Mr. Ball, the real issue involved in this investigation to my mind deals somewhat with the power of the Chief Executive in wartimes.

Mr. BALL. I would agree that the one issue involved in the seizure of Montgomery Ward & Co.'s plant is the issue of the power of the President, and the extent to which, in this case, he violated his constitutional limitations.

Mr. CLARK. Well, of course you are making a little assumption there.

Mr. BALL. I say that is the question.

Mr. CLARK. I hadn't completed my question.

Mr. BALL. I am sorry.

Mr. CLARK. I only want to suggest this, that in the few questions that I shall ask you, I do so in the light of the situation existing today. I am very serious about that. I have no disposition on earth to quibble, as your colleague expresses it. I am seeking your views as to one or two questions for the information of the committee. I hope we may be able to leave the "pepper" out of it, as far as you and I are concerned.

Mr. BALL. I hope so, too.

Mr. CLARK. I don't think that gets us anywhere.

The declaration of war against Japan and Germany, and I believe against one or two other nations, has some language in it which is a little different from any that has even been in a declaration of war except in the case of World War I. I have no doubt that you are familiar with that.

Mr. BALL. I am.

Mr. CLARK. Now after the preliminary resolution it says:

The state of war between the United States and the Imperial Government of Japan, which has been thus thrust upon the United States, is hereby formally declared and that the President be and he is hereby authorized and directed to employ the entire naval and military forces of the United States, and the resources of the Government, to carry on war against the Imperial Government of Japan; and to bring the conflict to a successful determination, all of the resources of the country are hereby pledged by the Congress of the United States.

I would like to have your reaction as to what place that language has, if any, in the matter with which we are now dealing?

Mr. BALL. I think, sir, that that language was the voice of Congress, speaking for all of the people, in their desire to do everything within their power to assist in the war effort. I do not think, however, that Congress intended by that language to say that the President of the United States, in his judgment as to what would be necessary for winning the war, could do everything that he decided to do, without an act of Congress to support him.

If that were the interpretation, then by this declaration of war Congress has entirely abdicated its constitutional function and has surrendered to the President of the United States the power to make all of the laws that he feels to be necessary for winning the war.

Now if that were the intent of Congress, sir, I would suggest that Congress has been engaging in a great deal of futile activity since Pearl Harbor.

Mr. CLARK. Well, now, "would not your statement that the President could do what he saw fit, or thought was necessary under that language, would that not be qualified by the principle that any abuse of discretion on his part would always be reviewed?"

Mr. BALL. I would say this. We must distinguish between the President of the United States; as President, and the individual who may hold the office. The President of the United States is the occupant of the office which is vested by the Constitution, in our form of government, with certain powers. As President he does those things which he is entitled to do by virtue of the powers that are vested in him. When he goes beyond those things which he has a right to do he ceases, sir, to be the President of the United States and is no more than any individual who is acting outside of the law.

When Congress says that the President shall do what he sees fit, it means, I assume, that Congress said, not that Mr. Roosevelt or any other occupant of that office may do what he as an individual may see fit, but what the President of the United States, acting within the scope of his office, sees fit to do. And the problem in our case is whether he ever, as President of the United States, had any power to do the things that he did.

Mr. CLARK. Well, my question, Mr. Ball, was really as to what your view is as to the reviewability of the act of any agency of Government which is guilty of abuse of discretion? Is that reviewable or not, in your opinion? That is what I wanted to find out.

The Attorney General has contended here as a matter of law that any abuse of discretion by a public official is reviewable in the courts.

Mr. BALL. That is not, as I understand it, a correct statement as to the law.

Mr. CLARK. What is your view about that?

Mr. BALL. If the President of the United States, or any official of the United States, acts within the law, any suit against him, when he is exercising the discretion that is vested in him by the law, becomes nothing more than a suit against the United States, which the courts cannot entertain without the consent of the United States.

When the individual acts against the law he, as an individual, may be sued in the courts because he ceases to be the Government of the United States; and it is only when his actions are outside the law that a remedy is had and that a court can review his actions.

Now that goes exactly to the situation which confronted Montgomery Ward at Chicago. We had an order of the President of the United States, in May. We did not believe that in issuing that order he was acting as the President of the United States. We did not believe that we were defying the President of the United States. We felt that we were only disobeying an order, not by the President but by the man who, outside of the scope of the office of President, was assuming to exercise, in the name of the President, powers which he did not possess.

We were confronted with this difficulty, that we could not sue Mr. Roosevelt. The Supreme Court has held that the President of the United States is not subject to process. We could only sue the agents who were there to carry out this order. We could only sue them if they did something which was illegal.

The mere possession of that piece of paper, the mere reading of that paper, did not make them act outside of the law in such a way as to get us into court.

Now, mind you, we had been experiencing for a number of years the resort by the Department of Justice, and by these agencies of Government, to every legal device to prevent court review of their actions. We had been faced, for example, in the District Court of the District of Columbia, with the charge that our action could not be brought against the War Labor Board members because it was, in essence, a suit against the United States.

Now when Mr. Taylor read to us the papers that he had, we asked him what he proposed to do to execute them, because it was only when Mr. Taylor as an individual did something that amounted to a trespass upon our rights, that we had an opportunity to go to the courts by an action against Mr. Taylor as an individual acting outside of the scope of his authority, and thereby avoid their trick of saying, "You can't sue the Government of the United States without its consent."

Therefore, our course of conduct for the 2 days was designed, by constant questioning, to get a threat or an action which would be sufficient to give us an opportunity to obtain court review, and it was not until the order was given to the soldiers to throw Mr. Avery out of the property, that the overt act of disobedience of the law, and of acting outside of the scope of their constitutional authority, occurred, that could have given us an opportunity to obtain a court review.

Mr. CLARK. You could then have, couldn't you?

Mr. BALL. After Mr. Avery was ejected from the building we could then, perhaps, have brought action against those individuals. We were working in the preparation of that in the 6 hours that elapsed between the ejection of Mr. Avery and the filing of the lawsuit by Mr. Biddle. Mr. Biddle got to the courts a little ahead of us. But you understand that had we brought our action against Mr. Taylor to enjoin him from trespass, or against Mr. Biddle, to enjoin him from trespass, we would have been deprived of court review in the same manner by the surrender of the premises, and the claim that the action was moot. That trick again would have deprived us of the opportunity of a court review.

We knew of no other way to obtain the protection of the courts to the guaranteeing of our rights, than to do exactly what was done.

Mr. CLARK. What I am trying to get at here is to ascertain whether Congress, through legislation, in its effort to do what ought to be done about the war situation, has put the American citizen in a helpless position. That is the purpose in my asking your views about that situation.

Now in passing section 7 of the War Labor Disputes Act, Congress set up, or authorized to be set up, the War Labor Board, and it says in that act that when the Board has decided an issue or a question, and entered an order, that that order shall be in force until further order of the Board. That I conceive to be the law today.

Mr. BALL. That, however, is not the law as declared by the court of appeals.

Mr. CLARK. Are you referring to this late decision?

Mr. BALL. Yes.

Mr. CLARK. Well, frankly I haven't read that decision, Mr. Ball, but that is the pretty plain language of the act.

Mr. BALL. I might say that on that point we would agree with you, and that has been our position in bringing our suit in the District Court of the District of Columbia, that we didn't believe that Congress intended by section 7 that the Board's action be futile.

We believed that Congress intended by section 7, if the Board obeyed the limitations upon its procedure and the substance of its orders and its jurisdiction—if the Board, in other words, issued a proper order—we believed that that order would fix the terms which legally would govern the relations of the parties in the future; and our contention to the District Court of the District of Columbia was that this order did fix the terms or profess to fix the terms, thus affecting our legal rights and thus giving us the right to come into the court and obtain a court review upon whether those legal rights had been properly and legally fixed and changed.

To our suit the Department of Justice filed a motion to dismiss. The theory of this motion to dismiss was that the Board's orders did not fix or alter the legal rights of the parties, and that contention, in those words, was made in the motion for dismissal.

The motion to dismiss of the Department of Justice said, "The Board's orders are not legally binding upon the parties." That phrase, "legally binding," appeared in the motion to dismiss filed by the Department of Justice. The same motion said, "The Board's orders are only advice, which does not have to be obeyed." Now they say, "Since this is only advice, and since these Board orders are not intended by Congress to be governing the rights of the parties, the court should dismiss this case because all it is doing is challenging the correctness of the advice given by the War Labor Board."

Now, that argument was the argument that was repeated to the Court of Appeals for the District of Columbia in this *Motor Carriers case*, and I think it would be appropriate if I discussed that case briefly here for clarification of the question which you have asked.

The *Motor Carriers case* involved an order of the War Labor Board which was issued before the passage of the War Labor Disputes Act. The motion to dismiss was made by the Government on the ground that this order had no legal effect, was merely advice, and therefore no—what the courts call—justiciable controversy, had arisen.

Now, the court of appeals in its opinion, which I have here and from which I quote, said:

The grant to the Board, in the War Labor Disputes Act, of authority to decide disputes, and provide by order the wages and hours which shall be in effect, is not directly relevant here, since the Board's order was issued in April 1943, and the War Labor Disputes Act was not passed until the following June.

So that the decision of the court of appeals upon the War Labor Disputes Act is purely dicta.

But the court did go ahead to express an opinion upon the War Labor Disputes Act and that opinion adopted the same argument of the Attorney General which was made in the motion to dismiss in the *Ward case*, which was decided by Judge Goldsborough.

That argument was that Congress didn't intend, by section 7, to make the War Labor Board's orders binding upon the parties.

You will recall—I think it was you, Mr. Clark, who asked Mr. Biddle whether he considered the War Labor Board a quasi-judicial or a judicial body, and he said he considered them neither a judicial or a quasi-judicial board because their orders were merely advice.

Now, here is what the court of appeals said about adopting the argument of the Department of Justice:

No one threatens, and no one could maintain, either judicial or administrative proceedings against the appellants upon the authority of the Board's order.

In other words they say that the Board's order is not enforceable by either judicial proceedings or by administrative proceedings, including the seizure of the property.

Now, the court concluded:

If it be true, as appellants suggest, that the President may ultimately take possession of their plants and facilities, that possibility is irrelevant, not only because it is speculative, but also because it is independent of the Board's order. Neither the broad constitutional power nor the broad statutory power of the President to take and use property in furtherance of the war effort depends upon any action of the War Labor Board. Any action of the Board would be informative and at most advisory. Appellants demand that we annul and enjoin the Board's order, therefore, amounts to a demand that we prevent the Board from giving the President advice, which the appellants contend would be erroneous. A court might as well be asked to prevent the Secretary of State or the Attorney General from giving alleged erroneous advice. The correctness of the administrative advice cannot be reviewed by the courts.

In other words, the Department of Justice, in order to keep these orders from court review, has been telling the courts that the Congress, in passing Section 7 of the War Labor Disputes Act, did not mean to set up any body which had the power to issue an order which should be obeyed; that all Congress wanted to do was set up a body which had the power to advise the President and the parties of how that body thought the labor disputes should be settled; and because it was merely advice it was giving, that the courts could not review it.

Now, you asked Mr. Biddle, in the midst of Mr. Biddle's examination—this is on page 303, Mr. Clark:

Could Congress have possibly intended to set up a board like this, to authorize it to hear and determine and order in vain, without it having some ultimate effect upon the remedy?

Now, I think, myself, that that was an exceedingly appropriate question, and we could give to that exactly the opposite answer to the answer which the Attorney General has given.

Mr. CLARK. I call your attention to the fact that there were two bills, one in the Senate and one in the House, dealing with somewhat the same subject. One of those original bills proposed penalties for violating the act, and the other one proposed, originally, court review of the Board's orders. Now Congress rejected both of those propositions and left the Act as it is.

Mr. BALL. Yes, sir. Well, now, I am familiar with this legislative history. I must say that you can make two different stories from this legislative history. We have explored, in the brief we filed in the District Court for the District of Columbia, our view of the legislative history of the act, quite fully, and I will be very happy to submit this brief to the committee.

But let me point out that the two possible conclusions to be drawn from that action of Congress are equally acceptable to Montgomery Ward.

If the Congress intended, by the absence of penalties, to mean that the Board's orders are merely advice—and that is the argument of the Attorney General—then certainly we will agree that they can't be reviewed. But we will also agree that they can't be enforced by any action, judicial or administrative.

In other words, if that view of the action of Congress be adopted, then this War Labor Board is acting in a vacuum and its orders are nullities.

Mr. CLARK. Right there may I get your views on another situation? You of course agree that as to the class of industry referred to in section 3, there is a clear right of seizure, that is referring to strictly war production?

Mr. BALL. We do and we recognized that in the Hummer plant.

Mr. CLARK. There is no disagreement about that?

Mr. BALL. No, sir.

Mr. CLARK. Let us assume this case, to get my thought across to you—let us assume that there is widespread labor trouble in the field of nonwar industry, including the transportation facilities other than railroads, which are covered by the Railroad Act, but in the communications facilities and service agencies, and that labor troubles in that field spread to the extent that they became so serious as to not only threaten but to jeopardize the war effort. The legislation of Congress being just what it is, and the war situation being just what it is, do you maintain that the President would have no power to interfere with that?

Mr. BALL. I certainly do, because he has a very easy remedy. He can turn to Congress, and there have been instances where this Congress in the face of emergencies hasn't taken more than 24 hours to pass the necessary legislation, and if he anticipates that that situation may arise, he can today turn to Congress and ask for the necessary authorization to meet it before it does arise.

Mr. CLARK. Well, I would have to go a little further with my assumption. It is not always entirely foreseeable what Congress may do. I have no way of knowing whether this act will be amended, or how. I don't suppose that the Chief Executive knows. But suppose the situation that I have pictured to you should arise without any change in the law, do you contend that the President would then be powerless to do whatever the situation might require to protect our troops in Europe?

Mr. BALL. My answer would be that the President has no such power, because it was very carefully anticipated by the framers of our Constitution that even in time of war the Congress would be the safe body to determine what should be done to meet that type of emergency.

Mr. CLARK. Well, you recognize, Mr. Ball, that there have been periods in the history of this country when it became necessary for Presidents to act in times of war when Congress was not in session or available?

Mr. BALL. Yes. I would assume that such a situation as the seizure of the railroad from Washington into Virginia by President Lincoln for the transport of troops for Manassas, which was done before Congress was able to meet and had an immediate military necessity, and I would assume that occasional actions in excess of constitutional powers, might be excused individually; but they should certainly never furnish a precedent or a pattern for the contention that the power which was admittedly exercised in an emergency against the Constitution, should then be converted into a grant of constitutional power that could be exercised with unlimited discretion on the part of the President.

Mr. CLARK. Well, now, let's be practical about this situation. I think the public pretty well understands that there is at present a right sharp division in the Congress of the United States over certain types of legislation, and I will go further and say in the labor field.

I don't know whether Congress will change this law or not, whether it will clarify it or not, but if it should not do so, do you maintain that the President can't exercise, under the Constitution, and under the declaration of war, whatever power may be necessary, reasonably necessary, to safeguard the welfare of the 6,000,000 men who are abroad?

Mr. BALL. I would assume this, sir, that all of us, as citizens of this country, do not look to the President of the United States as the sole safeguard of our liberties. We look to Congress, and if Congress fails to act because it doesn't consider that action necessary, and the President might take a different point of view, I, sir, would still prefer to leave my liberties at the protection of the democratic processes of Congress.

Mr. CLARK. Notwithstanding the fact that the declaration of war expressly directs him, the President, to do whatever may be necessary to win this war; isn't that right?

Mr. BALL. Your argument for that, as I pointed out, if that means now what you say that it does, that the President may do anything that he considers necessary to win the war, then means that the Congress has said to the President, "You do not need to wait for any further action from Congress on anything", and I do not think that that is what the Congress meant by the declaration of war, and I don't think seriously that you feel that that is what the Congress meant.

Mr. CLARK. Well, I think, Mr. Ball—

Mr. BALL (interposing). That would mean that he could levy taxes, if necessary; he could do anything that he considered necessary to win the war; he could compel the enlistment of our citizens—which might be a very wise thing to do, I am not saying—but it certainly was never contemplated that the President should have those powers, and I never would assume that Congress intended to abdicate its proper function and duty in time of war by surrendering it entirely to the President of the United States.

Mr. CLARK. I agree with that, sir. I recognize, of course, that there is a field between what may be done by the declaration of war and what Congress may have done up to now, and to my own simple mind this thing ought to be settled by legislation.

Mr. BALL. With that we are in hearty agreement.

Mr. CLARK. But my view may differ with that to the extent that Congress might not do that.

Mr. BALL. I would assume that if Congress didn't do it, it would be because Congress didn't think it should be done, and not because Congress considers, "Well, we don't have to worry about it because the President will take care of the job for us."

Mr. CLARK. By the way, how would you feel about section 7 if the Board's orders were made enforceable specifically by seizure, in the case of a labor dispute that may lead to substantial interference with the war effort, just as it does in the case of a labor dispute in a munitions plant?

Mr. BALL. If the War Labor Disputes Act had made War Labor Board orders enforceable by seizure of the plants of noncomplying employers in the event of labor strife, then a penalty, or a sanction—whatever 50-cent word you want to apply to the action—would have

attached to the action of the War Labor Board, and that would have made the orders of the War Labor Board justiciable and subject to court review before the labor difficulties had ever arisen which would have necessitated the seizure. But the argument of the Department of Justice in depriving us of a court review of this Board order was that it was purely speculative that you would ever have any labor difficulties or that there would ever be any sanctions—well, that there are no sanctions attached to the War Labor Board's acts.

Mr. CLARK. Suppose Congress should so amend that act as to authorize seizure under section 7, as a remedy, but should postpone the litigation of the question until after the fact was accomplished, as in the case of condemnations for war emergencies, what would you say about that? How would that suit you in your company?

Mr. BALL. You want to ask me as a lawyer how that would suit?

Mr. CLARK. Or as a citizen.

Mr. BALL. As a citizen, I would say that it would be regrettable that Congress would feel that labor difficulties in nonwar businesses couldn't be settled through judicial machinery until after there had been a physical appropriation of the property of our citizens.

Mr. CLARK. Well, now, you know, of course, that the War Labor Board has handled over 6,000 labor disputes. Do you think we could get anywhere with the war if all of those disputes were to be tried out in the courts?

Mr. BALL. As a matter of fact, as you and I well know, the vast majority of those disputes were problems of wages; and the rest of it, which are probably, in proportion to the number that would reach the courts, no larger than the proportion of any kind of disputes between people that may exist, only a very infinitesimal proportion of which ever reach the courts.

Then I would give you one other answer. It is my belief that hundreds and thousands of those disputes were not disputes which would have arisen if it hadn't been for the practice of the War Labor Board, and its announced policy, of granting something to unions that they had been unable to obtain in peacetimes.

Now, let me illustrate why I feel that, because I think these facts are of interest to this committee. We have had four disputes before the Board, three of which probably would never have arisen, and the fourth probably would never have arisen, if it hadn't been for the policies of the Board. I can make the same speculation about the rest of our disputes, but I think the facts prove it in these cases.

At Portland, Oreg., and Oakland, Calif., we had, some years ago, a strike which lasted 7 months, called solely by the teamsters' union to enforce a demand for the closed shop, and that strike was ended when there was, in writing, a withdrawal of the closed-shop demand; and that withdrawal was followed by the negotiation, the drafting, the signing, and the execution of contracts, and at that time the statement was made to us by one of these labor leaders that they were never going to raise the closed-shop issue with Ward's again.

When the policies of the War Labor Board, in granting union maintenance became known to those unions, the existing contracts were canceled and a new dispute arose, and the dispute arose because of the encouragement given to the creation of that dispute by the War Labor Board.

The same situation existed in our Hummer plant. We had a written contract which didn't provide for a closed shop in any form, and it was only because of the policies of the Board, as we look at it, that that contract was reopened.

In the case at Denver, there, just immediately after a union was certified, no opportunity was given to us to see if we could reach an agreement by the processes of collective bargaining, because the union made no pretense of bargaining but rushed to the Board for certification to get the union maintenance, for the express purpose of getting union maintenance without exhausting collective bargaining.

What has happened, sir, is that the large majority of those 6,700 cases represent the break-down of the legally established and protected processes of collective bargaining, because the Board, by its policy, has given an open invitation to these people to short cut the normal practices which normally would result in industrial peace in the intent of Congress, and has invited these unions to rush to the Board and create a fictitious dispute for the purpose of getting something they couldn't get any other way. I say to you, therefore, that I think this figure which you have is an entirely fictitious figure.

Mr. CLARK. That may be so; I don't know.

But doesn't your position, Mr. Ball, come down to this: You and your company are opposed to this maintenance-of-membership arrangement that the Board has worked out, and you are opposed to any agency set up by Congress to deal with labor disputes that may affect the war unless they are reviewable in court? Now, isn't that true?

Mr. BALL. No; that isn't the case. Let me make our position clear. We are not opposed to any agency of the Government that, acting within the powers properly given to it, decide a dispute in our case. But our only desire to go to the courts in this case arises from our belief that this agency has violated the will of Congress, and therefore our contest in this case does not arise because we are against the agency as such, but we are only against the agency because of our deep conviction that it has violated the law, and it is only our conviction that they have violated the law that makes us want to seek recourse in the courts.

Mr. CLARK. Let's go a step at a time. You can't get away from that unless you have your case actually reviewable in the courts?

Mr. BALL. That is right.

Mr. CLARK. Are you opposed to a War Labor Board or a similar Federal agency whose orders are not reviewable in court?

Mr. BALL. We would be against any machinery of Government that would be empowered to destroy the rights which the Constitution protects us from, without an opportunity of getting the courts to guard us against that.

Mr. CLARK. Mr. Ball, you are a good lawyer; in my judgment, a very fine one.

Mr. BALL. I appreciate the unwarranted compliment.

Mr. CLARK. You haven't answered my question, and you know it.

Mr. BALL. I think I have—

Mr. CLARK. My question is whether you are opposed to a Federal agency, like the War Labor Board—

Mr. BALL. There are two situations that we must distinguish. One would be whether we are opposed, as individuals, in our convictions,

to the actions of a board that would impose union maintenance legally; and whether we are opposed as a matter of principle, to the extent of asserting our rights as we have here, to a board which tried to impose those actions illegally.

Now, this question of whether Congress can deprive a citizen of the right to court review, in itself, it seems to me, raises a very serious constitutional issue.

You will recall that in the litigation over the Office of Price Administration, the Supreme Court was very careful to point out that the short-circuiting of the normal processes of judicial review accomplished by that legislation was only constitutional because there was still left the opportunity for attacking the actions of the Office of Price Administration through a somewhat limited, but nevertheless still existent, method of court review.

Now, I would, sir, as a lawyer be bitterly opposed, and as a citizen be bitterly opposed, to any agency of the Government empowered to issue an order which deprived me of my liberty or my property, while I was denied an opportunity to test the legality of its actions in the courts.

Mr. CLARK. Well, now, getting back to my question, I want to know from you—

Mr. BALL (interposing). I am sorry if I have strayed from it.

Mr. CLARK. In my judgment you have strayed from it, but it is all right, not too much. I am asking you as a representative of Montgomery Ward whether you are opposed to a Federal agency such as the War Labor Board, or a similar agency, dealing with these labor disputes and entering an order which is not reviewable in the courts by express enactment of Congress?

Mr. BALL. As an officer of Montgomery Ward, and as its legal adviser, I have looked at its problems solely from what I considered to be the best interests of its stockholders, and not from the standpoint of my own personal political convictions; and the difficulty when you address yourself, therefore, in the form that you do—"Speaking for Montgomery Ward, what would be my position"—I would say that my position, speaking for Montgomery Ward, does not go beyond the problems that have confronted Montgomery Ward. If you ask my personal convictions as a citizen, that might be different.

Do I make my point clear, sir?

Mr. CLARK. Very clear.

Mr. BALL. Montgomery Ward is not here for a political reason. Montgomery Ward has not acted in this matter for a political reason. Montgomery Ward has believed that its rights have been attacked, and that it has been deprived of its rights, and that the motives which have lain behind these actions have been political; but I assure you sir, that our actions have not been motivated by politics, but by a sincere belief that we are doing nothing more than protecting the rights of Montgomery Ward.

Mr. CLARK. Well, politics hadn't entered my mind from any angle. I want to get this clear as to whether you, here, representing Montgomery Ward before this committee, are unwilling to express an opinion upon the question that I asked you?

Mr. BALL. It seems to me, sir, that as a representative of Montgomery Ward, it is not appropriate for me to try to tell you what kind of legislation to enact.

I would assure you, however, that the policy of Montgomery Ward is to obey the law, and if this Congress elected to create such an agency and to give it clear and certain powers, which were exercised in a case against Montgomery Ward, Montgomery Ward would obey that order in exactly the same way that Montgomery Ward obeyed the order of the President seizing its Hummer plant, not in resentment but with cheerful cooperation.

Mr. CLARK. Here you are, as a representative of this great company; there is a controversy here between this company, which employs some 60 or 70 thousand employees, and we are dealing with labor disputes under an act of Congress, and you have mildly, and I think justifiably, criticized the acts of Congress, or some of them. I am trying to get your views about what we ought to do about this situation. I am trying to find out from you whether your company, as a great industrial corporation, with all these employees, would or would not oppose the enactment by Congress of the setting up of an agency of this kind by Congress, unless its orders are reviewable in court?

(Discussion off the record.)

Mr. BALL. Even a lawyer has to have advice, and I might say that the advice is, I think, exactly the voice of all of us. Montgomery Ward's position, and my position as a representative of Montgomery Ward, would be this: In the first place, we would be opposed to the creation of any agency that were permitted to act entirely without court review, and to impose binding orders upon us, because as long as you eliminate the opportunity of court review you have eliminated the greatest safeguard against completely arbitrary and dictatorial actions.

In the second place, we would be opposed to any agency which had the right to impose maintenance of membership or any other similar requirement upon us, as a matter of belief and conviction. But I do not want you to draw from that an inference that we would oppose it in the manner in which we have opposed this order, if it were the law, because we will obey many laws with which we are not in personal sympathy.

In the third place, we believe that any agency that should be set up should have its powers carefully defined by this Congress, and the limitations upon those powers carefully prescribed, because we believe that the failure to define those powers, and to circumscribe them is the open door to the abuse of power which we sincerely believe is a step down the road to a destruction of our system of government.

Mr. CLARK. I thank you for your frank and nice answer.

I don't mind telling you that there are problems in this that puzzle me as a Member of Congress. I can see, for instance, how, in war-times, with the labor troubles we have had, something ought to be done of a practical nature to keep war industry moving, and yet I don't want ever to cast a vote that will unjustly deprive an American citizen of the smallest right. There is a problem involved and I wanted your views on that problem.

But now I want to go a step further. If you do not have a Board that may settle these disputes without court review, and if it has no power to impose the maintenance of unions, or any other kind of compromise between the open shop and the closed shop—if you don't have any of that in the field between labor and employer in these

most troublesome days, haven't you just put the thing back into the open where the old fight between the open shop and the closed shop may go ahead and do what it will to the war effort?

Mr. BALL. Well, I doubt if any legislation can be passed by this Congress that would entirely solve all of the problems which we face.

The National Labor Relations Act was passed by this Congress in the belief that it was a step toward industrial peace. It did not solve all of the problems.

We might say that Montgomery Ward & Co. has had no fundamental quarrel at any time with the provisions of the National Labor Relations Act; that what we have quarreled with, when we have quarreled—and I dislike that word—has been with the abuses in the administration of that act. We might also feel that other legislation, which balanced the scales of fairness by imposing similar restrictions upon labor organizations, might further tend to increase industrial peace.

But the point that I can't help but be conscious of is this, that if we have a War Labor Board which is really accomplishing a great purpose, why is it that the loss in man-hours and the strike situation here is more aggravated today than it was in peacetimes?

Mr. CLARK. Well, Mr. Ball, I don't know enough to undertake to answer the question.

Mr. BALL. Well, we will assume that that was a rhetorical question, then.

Mr. CLARK. There was some testimony, however, before this committee, that would be somewhat in conflict with that. After all, if you will permit me to say so, I do not think that your answer was responsive to my question.

Mr. BALL. If you will repeat the question, or have the reporter read it, I will try to answer it.

Mr. CLARK. I will be glad to do so.

I say if we are to have no agency similar to the War Labor Board, empowered to make orders which are not reviewable in court, and if it has no power to enforce, impose and enforce maintenance of membership, or some other reasonable compromise between the open shop and the closed shop, if we can't do any of that, then don't we have, in this wartime, just the old fight between the open shop and the closed shop?

Mr. BALL. My belief is that that question poses what they used to teach us in the old days was a false dilemma.

Mr. CLARK. Well, I wouldn't want to be guilty of that.

Mr. BALL. I suggest that simply because I believe that you have overlooked—

Mr. CLARK (interposing). Let me change my question. Suppose Congress should today wipe out the War Labor Board—where would we be?

Mr. AVERY. That would be delightful.

Mr. BALL. My personal conviction is this—you see I have been educated in the public prints and in the union papers to believe that it was the admirable restraint and cooperation of organized labor in following out a pledge it made to have no strikes in wartime, that has been the chief contributor to our industrial peace.

But the situation that you have asked me about now makes it difficult for me to answer responsively, because I do not think that

the alternative you pose is the necessary alternative to our present situation.

I think, for example, that a large number of the disputes that arise between union and management today could be settled if it were once understood that unions were not going to be given, as the price for their supposedly patriotic sacrifice of giving up the right to strike, a privilege which they never had obtained from those particular employers before.

You see the idea that we have to have a compromise sounds much better when spoken than it does in fact. We have a situation today where the employees of a certain employer receive certain wages and live under certain conditions, but they have no requirement that any part of them have to belong or do not have to belong to a labor organization. The labor organizations ask, as their price for not striking in time of war, that they be given a reward—union maintenance.

Now I don't know that the employers are given any corresponding reward for accepting any orders of the War Labor Board, and I think it would be repugnant to employers, generally, to feel that their patriotism had to be rewarded by any gift of a Government agency.

Mr. CLARK. I am sorry to have been so troublesome and I am sorry to have consumed so much time.

Mr. AVERY. I wonder, sir—I like very much your approach to this subject—if you would permit me to say one thing, Mr. Clark?

Mr. CLARK. Certainly.

Mr. AVERY. I should like to call your attention to the fact that the human nature in this is bound to obtain, as it does before a war, and under the stress and opportunities and the imposition of supply and demand it is not to be expected that the normal results of that will show themselves in the eagerness for rewards of the employee, and the privileges, particularly after 12 years, he has been led to believe that to him, as must be always true, are underfed, underhoused, underclothed, and so on, of that kind.

Out of that there has come a machine here with a good purpose. Everybody favors something that will widen the distribution of the great wealth we constantly learn more and more easily to produce.

The difficulty, as economy evolves these larger concerns, these large concerns, and it continues to move in the direction that is to be seen by those who have made, in production, such wonderful developments for the winning of this war—it is said that 100 concerns do a very heavy percentage of the war service in that line—those great producers have, of course, attained an economy that never existed in the world.

And here, on the other side, for years the economists have pointed out that the next march of progress in economy is going to be in the field of distribution, and that we shall, in some way, have a great advance in that, as great as we have had in production.

We point out, sir, that you are addressing an institution—in considering this case—that has been one of the leaders in becoming a successful economist in the common interest, to match in distribution the great economies in mass production.

When we get into those relations then we have the additional burden of numbers; we grow large; the responsibilities are very heavy and they must be established through constantly increasing numbers; and the relations get to such a point that even the production and the distribution form again into another larger thing.

Many of our people forget the economy lessons that are so readily learned on the farm. Those simplicities now get to be more confusing to people who work their entire lives, perhaps, for a single institution, progress reasonably in some part of it, steadily going to a higher position and making what can be called a success—and yet learn from their personal experience none of the realities that come from the more simple meeting of those problems which you find in simplicity on the farm.

Now with these great groups here we are today in conflict. They want more, and the employer seems to be the deterrent in giving that. He certainly makes the very highest of competition, and death is his penalty if he fails.

The cost of production is made up, of course, largely of labor, and in conditions of this kind the formation of groups in labor is quite as logical as it is in production or distribution, and must continue to be that way.

Leadership, then, comes more and more to hand, and ideals for all swing high. And that is a glorious thing, and I suppose America can be credited with having gloriously accomplished it in the field of labor as well as in these other forces.

They then work to the point where, in unreason, they ask more than they can possibly receive, and in those heavy demands press so hard that they can destroy and injure the thing.

I think our difficulty here is not against unions at all. We have had no success in making anybody understand that we were not fighting the unions. But truly, sir, we are not. But we are fighting the taking of liberty from the individual, whether he is one place or another—and it gets to the closed shop.

The point that I wish to make, sir, is that the machinery that has been built up in this labor machine, these requirements and these beliefs, are excessive, impractical, and have, with these agencies, been very unwisely handled.

The public is recognizing it. Costs are coming up. The correction that you are reaching for we all believe is right in the field of experience, that it is going to come from the body you gentlemen represent, in accordance with the law we worship, and intend to retain. It doesn't have to be abandoned; we need no king; we need no dictator; we need only the instrument we have and a little better management in the selection of those who are to treat these things.

This thing that is up here must be taken, sir, out of the position of demanding it. We must have discipline, order, and a proper consideration, which these things, I think, are proving that we don't have as we should have.

Mr. CLARK. Let me say to you, Mr. Avery, I think there is a good deal of doubt about the wisdom of our policy in this field, probably of our legislation. It is a troublesome problem at any time.

I believe Lord Macaulay predicted, many years ago, that we would reach about this point. But conceding that there have been mistakes, or that things have been done that are not wise, would you, out of your great experience as a fine, patriotic American citizen, feel that it would be safe, at this time of great crisis, during a war, to undertake to form all of that and fix it like we say it ought to be?

Mr. AVERY. I should say, sir, that that must be done, and I should say that sitting here together we represent an active and important

step in that situation. I believe it is intended that Congress shall learn the facts that experience has developed under these conditions. I think the condensation of the two reports that I read should be read by everyone in this room with great intentness and study. They point out actually what we face today and what you gentlemen have been asked to investigate.

Those things are being badly handled, sir. We are getting into politics, and in the correction of those things there is going to be a solution under these most trying war conditions. The ideas here advocated I hope you will not believe are in some narrow financial success consideration. This is to overcome a wrong in the interests of the country, not to cut wages.

We have taken that position here repeatedly and for all these years. We never talk about wages and when they were brought up today the same irritation will always come as did here. We want to make clear that the mistakes that we are undergoing from all our strikes and difficulties should be corrected, and that the wage element is secondary, because that would so make apparent the greedy grasp of large corporations—but what we want is a balanced treatment that would be better for the entire population of the United States.

Mr. CLARK. And you think we should do that now, under war conditions?

Mr. AVERY. You asked the question, sir, Do you think that we should correct these conditions with the War Labor Board? You must, sir, in some fashion or other, and I think by public pressure great things are being handled. Those conditions that are truthfully stated in that summary, or in the longer report, are actual, and the organizations that are acting here, these bureaus, must be corrected and made to act in accordance with the facts.

The CHAIRMAN. The committee will take a recess until 2:30 o'clock. (Whereupon, at 1:25 p. m., the committee recessed until 2:30 p. m. of the same day.)

AFTERNOON SESSION

(The committee reconvened at 3 p. m.)

The CHAIRMAN. The committee will come to order, please.

We will continue with the examination of Mr. Ball.

Mr. Elston?

Mr. ELSTON. Mr. Ball, there has been some statement made at these hearings about priority ratings that Ward's have received from the Government. Are you familiar with those?

Mr. BALL. I am.

Mr. ELSTON. I wonder if you would explain to the committee just what priority ratings the Montgomery Ward Co. has received.

Mr. BALL. I am happy to. There is a great deal of misunderstanding about just what constitutes a priority rating. When the United States filed its action at Chicago, they filed a number of affidavits setting forth information concerning the priority applications that Montgomery Ward was supposed to have applied for and received.

We have analyzed those and analyzed the problems of the company in connection with the various rationing problems.

You understand that there are a great number of items that are sold by every merchant in the country who sells that type of item at

all which cannot be repurchased by the retailer unless he extends back—I think the phrase is—some kind of priority from his customer to the manufacturer.

For example, if you want to build a chicken coop and want to get a hammer to do that work, you have to come to the company and sign an application which indicates that you are a class of customer that falls under such and such a rating to get that hammer.

Then, Montgomery Ward & Co., extends that after it sells the hammer, provided that there are no priority applications or demands of a higher priority for that hammer, to the manufacturer.

Now, thousands of those kinds of papers pass through the company's files. There are forms known as PD-1X, which are distributors' applications for preference ratings. Some 75 percent of the so-called preference ratings referred to in the affidavits of the Government fall under this form. This is a form which permits the replacement by a distributor of his stocks of a large number of items. This is called a distributor's application for preference rating, and it simply means that no one retailing this large list of items can restock those items until he has filled out this form so that the total country-wide demands for these items can be ascertained by the Government.

This is a form which may be filed by any distributor, and a distributor is defined as any person, firm, or corporation engaged in the business of stocking or warehousing for resale materials procured directly from manufacturers. In other words, the word "distributor" in this application is as wide as the entire retail industry.

There are certain other applications that Ward's, as is true of almost everybody else in the United States, has filed. For example, we have had occasionally some need to do some repairs of our store property just as many people have been required to make repairs upon their homes, or their corner grocery stores, or their owned property, and in order to get the materials for that an application has to be made. The purpose, as I understand it, is not to assume that every person who makes such an application is essential to the war effort, but simply so that the flow of those materials can be controlled and if there is a shortage at any one time, a classification of priorities can be dropped from the list.

Then, there are a number of other situations where certain lines of merchandise cannot be sold to anyone except those who have been assigned preference ratings.

Now, that means when you use the word "preference" it is sometimes exactly the opposite of preference. You may be at the very bottom of the list and may be the least preferred person in the country, but you still have a preference rating.

Now, all of the so-called preference applications that Ward's have filed have been exactly the kind of applications that are necessary to be filed by anybody engaged in the general retail business, and in the affidavits which we filed in the district court at Chicago, we set forth an analysis by affidavit under oath of the various claims made in the Government's application, and they reduced finally to that conclusion.

I am, as you know, submitting those affidavits to this committee.

Mr. ELSTON. And I take it your company hasn't been given any consideration that is not extended to another company engaged in the same kind of work?

Mr. BALL. None whatever, and the company has not asked for it. I should qualify that by saying that in connection with the operation of the Hummer Manufacturing Co. and the Wardway Paint Works, certain applications have been made in connection with the work of those manufacturing enterprises, and my answer should be exclusive of those.

Mr. ELSTON. Now, I believe some statement was made that the company would not bargain with the union. I am asking you, as an attorney, if at any time that contention is made, what remedy the union has.

Mr. BALL. The union has a remedy which is extended to it very promptly by the National Labor Relations Board to file charges of failure to bargain collectively against the employer. The phrase in the National Labor Relations Act imposing the duty to bargain collectively by making it an unfair labor practice to refuse to do so, has been defined and interpreted by the courts to mean a duty to bargain in good faith. If there were the slightest evidence at any time of a lack of good faith pursued by this company or any other employer of the duty to bargain collectively, the remedy which has in times of peace proven adequate and presumably would be equally so to any patriotic union, is available to the union.

Mr. ELSTON. Mr. Ball, this morning you were asked about the authority of the President to seize property during wartime. In your examination of the authorities, do you find that the President was given any greater power under the Constitution with respect to the seizure of property than he has during peacetimes?

Mr. BALL. I find no such power except as the President may be commanding military operations in an actual field of military combat.

Mr. ELSTON. Now, in the case referred to about the seizure of a railroad during the Civil War by President Lincoln; that, I believe, was done when there was no statute which authorized that seizure.

Mr. BALL. But, if my recollection is correct, it was immediately ratified and submitted for the ratification of Congress at the earliest possible moment.

Mr. ELSTON. That is the point I was coming to. As soon as Congress was assembled and Congress had the ability to act, Congress acted and provided by law that the seizure could be made.

Mr. BALL. That is right, and that property was within the field of actual military operations, and even then it was felt necessary for Congress to ratify it.

Mr. ELSTON. I would like to ask you, as counsel for the company, if you have made every possible legal effort to have the question of the legality of the seizure of your company determined in the courts?

Mr. BALL. We have given much anxious thought to every possibility, however, remote, of a remedy available to us, and if we knew of such remedy, we would be attempting to pursue it.

Mr. ELSTON. In those cases when you did get into the courts, and when there could have been a decision, as I understand your testimony, you were prevented from doing it by the action of the Government itself.

Mr. BALL. When we sought the protection of the courts, the attempt was made to exclude us from the courts, and an attempt was made by every dilatory tactic, when the exclusion wasn't complete, to delay the case from coming to issue.

Mr. ELSTON. Had the injunction suit filed in Chicago not been dismissed, would you have been able to get your question decided?

Mr. BALL. The question of the legality of the seizure could have been decided in that litigation, but not the question of the legality of the War Labor Board order, because the two are not related.

On that if I may, let me point out that that case was originally set for decision at the end of the 10 days in which a temporary restraining order must necessarily expire without hearing. That would have terminated, therefore, at the outset on the day before the property was returned to the company. It was moved over after the National Labor Relations Board had set the date for a decision the day after the election date was fixed, and on the protest of the company to that delay, every effort was made by the Department of Justice to keep that delay in effect.

In other words, the Department of Justice begged the court not to permit its decision to come down until after the election was held, and I draw the natural inference that that was done in order to further a plan already in mind to return the property and make the case moot before the judge would have an opportunity to express his views.

Mr. ELSTON. Well, then, the case was dismissed on the day following the election, was it not?

Mr. BALL. It was, as the judge had no option but to do.

Mr. ELSTON. And the Government moved out of control of the company even before the election returns had been made public?

Mr. BALL. The notice was given even before the election at 7 o'clock, which closed the polls. It was attempted to be done simultaneously with the closing of the polls.

Mr. ELSTON. So the Government could very easily have remained in control until the following day, and gotten a decision from the court?

Mr. BALL. If they had been acting legally under section 3, they could have retained the possession of the property for 30 days after operations were returned to normal, and therefore they could have remained in possession had they been legally in possession until the issue could have been decided by the courts.

Mr. ELSTON. Now, this morning I was quite interested in a statement Mr. Barr made about proceedings before the War Labor Board in which the company was denied the right to evidence which the Board acted upon in reaching a decision.

Are you familiar with that?

Mr. BALL. I am familiar with that, and I am also familiar with the procedure which the Board has followed in all of its cases against Ward's, including the case that led to the order preceding the seizure of the Chicago properties.

When we went to the District Court of the District of Columbia in an attempt to review the Board's orders, one of the charges that we have urged most strongly upon the court was the absolute failure of the Board to ever give us the faintest semblance of a public hearing which the Congress required.

The Supreme Court has said that when Congress orders an agency to hold a public hearing and to determine at issue at public hearing—and I quote from *Shields v. The Utah-Idaho Central Railroad Company*, 305 U. S. 177:

The requirement of a hearing has obvious reference to the tradition of judicial proceedings by which evidence is received and weighed by the trier of the facts.

Now, these proceedings before the War Labor Board have so completely smacked of the character of the star chamber that there never has been any evidence before the Board when it acted in a number of these cases. There was no evidence before the Board when it issued the Chicago order.

Let me review the proceedings that led to the order at Chicago to illustrate. The order at Chicago was initiated by a demand from the War Labor Board that we come down and show cause why this contract should not be extended, the word "extended," of course, being a misnomer.

The intent was a reinstatement of terms which had already expired.

In other words, the Board had acted as if it were going to order a certain thing unless we could produce evidence which would convince them that it shouldn't be done. The union was permitted to make speeches. Nobody was placed under oath. No cross-examination was permitted. No evidence of any character was received. No findings of fact supported by any evidence were ever made. There wasn't a single bit of consideration given to any circumstances in that particular situation so far as those circumstances were disclosed by evidence, and all that the Board did was to issue as an order, what it predetermined to decide.

Mr. ELSTON. Of course, it is unnecessary to ask you if that is a violation of section 7 of the War Disputes Act.

Mr. BALL. I would say not only that, but it is a violation of the Constitution which guarantees due process of law, which means, among other things, the observance of the traditions of our law in procedural matters.

Mr. ELSTON. Mr. Ball, there has been some interrogation here of you and others about the procedure that was followed in seizing your place of business in Chicago, and ejecting Mr. Avery from the premises. Were you present when these proceedings took place in his office?

Mr. BALL. I was present through all of them; yes, sir.

Mr. ELSTON. Did you at any time see Mr. Avery do other than assert a legal right which he felt existed?

Mr. BALL. Mr. Avery did nothing at any time any different from what I, as a lawyer, would have advised him to do under those circumstances, and it was very clear at all times to every member present at those meetings that there was to be no forceful resistance; that all we were waiting for was the illegal action that would permit us to go to court.

Mr. ELSTON. Did you make that plain to the Attorney General?

Mr. BALL. That was made very plain to Mr. Carusi the first day, and to the Attorney General when he was there, and I am confident from his own statement to Mr. Avery that he understood what we were doing in demanding a show of force and that he fully understood the reasons for our position.

Mr. ELSTON. And you feel that the forcible ejection of Mr. Avery from the plant was necessary in order to establish what he was claiming?

Mr. BALL. I felt confident as a lawyer that anything less than that would have been used as another excuse to try to deprive us of an opportunity to present the issues to the court.

Mr. ELSTON. Some reference was made this morning about plant guards and that possibly some show of force might be made against

the Government. Was any suggestion or any hint at any time given to anybody that that was likely to occur?

Mr. BALL. To the contrary, and I say it is an insult upon the respect which we individually have and the company has always shown for law and order to believe that we would have done anything of that violent character to create a disturbance of the peace.

Mr. ELSTON. Did Mr. Biddle or anybody present indicate they had any such apprehension as that?

Mr. BALL. I don't think anybody at that conference ever had the slightest misunderstanding of Ward's position or the slightest apprehension that anything of that kind would take place.

Mr. ELSTON. Did you see any show of bayonets?

Mr. BALL. I saw the bayonets exactly as Mr. Barr has described them. I would say, to amplify what Mr. Barr said, that while the bayonets were perhaps not lunged at any one of us in the room, that the soldiers were looking at us as they stood at charge, as they marched into the room, and I can assure you that in the sanctity of a private office to see men in battle dress enter with fixed bayonets, with metal helmets on their heads, gives you the strangest of emotions, and I shudder to think what the significance of this must be.

Mr. ELSTON. Do you know of any similar occurrence in all the history of the United States?

Mr. BALL. I am happy to say that I have never heard of such a similar previous happening in our history.

Mr. ELSTON. Mr. Barr stated this morning that it was Mr. Biddle—and I believe Mr. Avery made the same statement yesterday—who gave the order to remove Mr. Avery from the premises.

Mr. BALL. Mr. Biddle, obviously to everyone in the room, completely lost his temper and shouted this in a voice which quavered.

Mr. ELSTON. And what did he shout?

Mr. BALL. He shouted, "What are you waiting for? Throw him out."

Mr. ELSTON. And to whom was his order directed?

Mr. BALL. To Major Webber, who was in command of the four soldiers who had entered the room prior to that.

Mr. ELSTON. Was there anything in the orders that had been given to your company indicating that he had any authority to direct the Army?

Mr. BALL. We had asked Major Webber what his commands were and he said he had been ordered by his commanding general to place himself under the command of Mr. Taylor. There was certainly no indication that Attorney General Biddle had any authority to order the Army.

Mr. ELSTON. Some reference was made this morning to the possibility that the declaration of war passed by Congress extended to the President the authority to seize plants, or to seize any place of business that he might see fit to seize in the prosecution of the war. You know, of course, that the declaration of war was passed without debate, don't you?

Mr. BALL. I would assume, sir, that it would have been.

Mr. ELSTON. And don't you know that since that time Congress has appropriated every dollar for the war?

Mr. BALL. Which I assume that Congress would not have done if it had given the interpretation of the declaration which the Attorney General has given to it.

Mr. ELSTON. Have you ever heard the contention made before today, or before this case originated, that the President was granted any such authority under the declaration of war as was indicated by the questions here today?

Mr. BALL. The first time that contention ever came to my knowledge was when it was advanced by Attorney General Biddle in the argument on the injunction suit at Chicago.

It was, I would say, a very novel idea to us, and an astounding one.

Mr. ELSTON. Just one other question, Mr. Ball. This morning the chairman read a newspaper clipping indicating that the earnings of Montgomery Ward & Co. had decreased slightly during the month of May, that sales had decreased during the month of May. I have been handed a newspaper—perhaps it may be the same newspaper from which the chairman read, the Washington Post of today—in which that does appear, but immediately below appears this statement, which I would like to read into the record:

CHICAGO, June 6.—Sears, Roebuck & Co. reported today sales for the month of May 1944 amounted to \$81,810,333 as compared with \$66,746,068 for the same month a year ago. For the 4 months ended May 31, 1944, sales were \$296,007,928 as compared with \$264,267,874 for the same period in 1943.

Mr. BALL. May we, for the record, congratulate our competitor.

Mr. ELSTON. Well, apparently, the decrease in your sales was not due to the season or not due to any general condition. Wouldn't you think so?

Mr. BALL. I think the figures speak for themselves.

Mr. ELSTON. I think they do, too. I believe that is all, Mr. Chairman.

The CHAIRMAN. Mr. Byrne?

Mr. BYRNE. Mr. Ball, you haven't answered those questions regarding the matter of priorities before?

Mr. BALL. I did, Congressman, while you were away.

Mr. BYRNE. Would you tell me now? I can get it from the record, but I want to find out from you how many of those preference priorities there were.

Mr. BALL. It would be impossible for us to give you, sir, the number of various papers that are used by the company in the matter which I outlined earlier, because while they are on file in the various stores where a customer may leave his request for priority rating that we have later extended, it would be a tremendous physical task to order us to collect the statistical summary of the number of them, especially since—as I pointed out in your absence—there is nothing in any of those priorities which in any way would distinguish Ward's from any other retail merchant in the field, including the smallest in the country.

Mr. BYRNE. Would you say the number would be 36,000?

Mr. BALL. It might very easily be that, sir, and I would assume that many a small store in the smallest of communities might have several hundred if its experience paralleled ours.

Mr. BYRNE. Did you also secure certificates of war necessity for trucks that you have?

Mr. BALL. Any retailer who wished to make deliveries of merchandise of course cannot do that unless it has been subjected to the scrutinizing eye of the Office of Defense Transportation, and in our requests for such applications, we in no wise distinguished our situation from that of any other retailer.

Mr. BYRNE. I asked you whether or not there were four of your subsidiary factories, and I think I was told there was only one.

Mr. BALL. I might say the word "subsidiary" is not entirely accurate. None of them are independent corporations. We have a small factory at Springfield, Ill., and a small paint factory at Chicago Heights, Ill., and a small factory which is hardly a factory at all, a place for weaving some wire for defense, at Fort Madison, Iowa.

Mr. BYRNE. Kindly tell me what, if anything, you did regarding lease-lend for the Government.

Mr. BALL. That is covered by one of the affidavits that I referred to, because the lease-lend story was mentioned in the affidavits of the Government. That is in the affidavit of Mr. Gordon Anderson, which I shall not read entirely.

The Treasury Department, Procurement Division, bought a number of low-priced men's, women's, and children's shoes carried in stock by the company, which I understand later went to lend-lease. You understand that when shoe rationing came along many shoe merchants found themselves with stocks of low-priced shoes that were not attractive to the general public because of the desire of the public to get the best shoes for the limited number of coupons.

We, together with many other merchants, had overstocks of those shoes, and the Government came along and bought a lot of them which I understand went to lend-lease. Those were shoes from our retail stocks, and I assume many other retail merchants had the same experience.

Mr. BYRNE. Mr. Ball, getting back to your philosophy regarding disputes between management and labor, what, in your judgment, is the last resort for the settlement of disputes between management and labor? Do you feel that arbitration might bring about such an adjustment?

Mr. BALL. I think, sir, that the best solution for the settlement of labor disputes has been the process of collective bargaining, which is guaranteed by the National Labor Relations Act, because eventually compulsion upon either party to the agreement is never as successful as agreements openly and voluntarily arrived at through the process of collective bargaining.

I might say that the only difficulty we have ever had of obtaining industrial peace through that device has been the intransigence of certain labor unions in insisting upon some form of closed shop.

Mr. BYRNE. Don't you believe it is possible to arrive at any settlement in accord or accommodation based upon arbitration?

Mr. BALL. I would assume, sir, that if you are going to submit a matter of principle to arbitration, that you presuppose the possibility of compromising a principle. My philosophy is that basic principles necessarily have to be compromised.

I would say, putting it succinctly in another way, that liberty cannot be arbitrated away, or should not be.

Mr. BYRNE. Then you really don't, as a matter of fact, believe that arbitration can settle by way of accommodation, so-called principles which, in your judgment, are immovable?

Mr. BALL. You asked a question that is much broader than what I have said. I would say that I do not recognize that the closed-shop principle by which we mean the restriction upon the freedom of employees to join or refrain from joining or to resign from a labor union, is an issue which I believe is properly submitted to arbitration.

If there should be a sacrifice of that principle, it should be by legislation which has been passed by the Congress speaking for the majority wishes of the Nation, and should apply, I might add, equally upon all employers without discrimination, whether that discrimination arises from fortuitous events or by a different application of the law to different employees by an administrative agency.

Mr. BYRNE. Then who, in your opinion, should have the last word in settling a dispute?

Mr. BALL. I would say, sir, that there is no necessity that anybody have the last word. I assume that in the family relationship, for example, there is no necessity that every dispute be submitted to somebody on the outside. If certain standards were set up by Congress for the settlement of labor disputes, and those standards were clear and well defined, and applied to all, I assume that an agency applying those standards without discrimination might be something else again than the problem we are discussing here.

Mr. BYRNE. Is it so that Montgomery Ward rejected the request of the union to post notices of union meetings on its bulletin boards?

Mr. BALL. Let me refer that question to Mr. Barr.

Mr. BARR. Yes; that demand has been rejected.

Mr. BYRNE. What is the basis for the rejection of the request?

Mr. BARR. It is this: That these bulletin boards to which you refer are part of the company's premises and are maintained for the purpose of furthering the company's business. We do not permit the posting of any extraneous literature on these bulletin boards, for which we have many requests. They are maintained solely for the company's business.

Mr. BYRNE. Would you say that a notice of a meeting would be extraneous on the part of say 2,400, or whatever the number may be, of your employees who are cooperating with you and you are cooperating with them while your agreement is in operation?

Mr. BARR. Well, sir, it has been the purpose of the company to remain absolutely and wholly neutral with respect to this union activity among the employees. It is our feeling that that is, and properly should be, an employee activity. The company has not lent its property or any of the things under its control either to further the interests of the union or to attack the interests of the union. We do not permit the posting upon these company bulletin boards of notices which are sponsored by the union and would be placed there in their interests. Neither do we permit the posting of any antiunion literature on these bulletin boards.

In other words, the bulletin boards are reserved for the purposes of the company's business, not entering into the union activity in any way on either side.

Mr. BYRNE. In other words, you have a "hands off" attitude?

Mr. BARR. Absolutely.

Mr. BYRNE. Regarding questions involving the union or those opposed to it?

Mr. BARR. That is right.

Mr. BYRNE. Do you know whether or not Montgomery Ward has ever refused to incorporate a clause in a contract on maintaining healthful and sanitary conditions in its Chicago plant?

Mr. BARR. Oh, there has never been an issue over the maintaining of sanitary or healthy conditions in the Chicago plant, sir. I might

say that during the past few years, very substantial improvements have been made in the Chicago plant in its physical condition, and we are continually striving to improve that situation. There is no issue over that.

Mr. BYRNE. In other words, you heard no questions arise regarding insanitary or unsanitary conditions?

Mr. BARR. No; not specifically. During this recent meeting of the union that I referred to this morning, I might mention that one of their 17 listed demands was substantially as you have stated and there was no disagreement between us on the principle of that because both the employees, as such, and the management of the company, as such, are interested in maintaining as pleasant conditions in the plant as it is possible to do.

I might say in reference to your previous question, Congressman, on the use of these bulletin boards, it is my opinion that the position which the company has taken on that is exactly in accord with the spirit of section 8 (2) of the Labor Relations Act, passed by Congress, which requires that we give no support of any kind to a labor organization.

Mr. BYRNE. Do you know if Montgomery Ward has refused to incorporate job descriptions of classifications in the contract?

Mr. BARR. No; in our contracts we naturally identify the job to which the wage rate applies. In other words, a wage rate for a packer, we would say, "a packer with so much per hour," don't you see? Does that answer your question?

Mr. BYRNE. I don't know whether it answers it. Frankly, I don't know enough about the dispute, assuming there is one, but I wanted to find out whether or not there has ever been any controversy that you know of between your employees and the management as to the description of jobs according to classification, so that there might be an identification.

Mr. BARR. There has never been any request made that the description of the job, other than the title of the job, be included in the contract. A job description in the sense of writing a narrative paragraph on the duties and responsibilities involved on a certain job, if you mean job description in that sense—there has never been any issue over the incorporation of that in the contract.

During the period of our relationship with this union, requests have been made that the company furnish the union, that is, outside of the contract, a job description, that is, a narrative statement of the duties and responsibilities of various jobs named in the contract and all of those descriptions which the company has prepared have been given to the union. There is no dispute over that.

There are a few jobs in the plant as to which such a description simply never has been written.

I might say, in addition, that this situation to which you refer is not a static condition. The impact of the war, particularly, has necessitated certain changes in the method of doing some of these particular jobs. The employment of a larger percentage of women as distinguished from men has brought about some changes, so some of these jobs and the descriptions of different jobs are changed from time to time.

The company is constantly studying that, attempting to improve the condition, both by its own staff and with the aid of outside experts.

Mr. BYRNE. Would you say that the situation in your plant is one of general harmony between management and employees or is it one of disorder regarding the attitude of one toward the other?

Mr. BARR. Yes. I would like to comment upon that. I am acquainted with that.

The attitude in our plant is one of harmony between the management and the employees and the only thing which we have had which would in any way be to the contrary has been a few isolated instances where some person interested in this union organization among the employees has come in in a deliberate attempt to stir up dissatisfaction or dissention among the employees. The most specific thing along that line is the publication of this very vicious and inflammatory "Spotlight" paper, to which I referred this morning.

Mr. BYRNE. I believe that is all.

The CHAIRMAN. Mr. Curtis.

Mr. CURTIS. When Mr. Biddle was before us a few days ago, I referred to a statement filed by the Attorney General's office, in the case in which Montgomery Ward was plaintiff and the N. W. L. B. was defendant.

Mr. BALL. The National War Labor Board?

Mr. CURTIS. Yes; National War Labor Board. I recite a quotation from the Attorney General, as follows:

The Board's orders under Executive Order 9017 are not legally binding on the parties to the labor dispute and do not fix or alter their legal rights,

to which Mr. Biddle replied—

That is precisely true. In other words, it does not give them the right to come to court. It is not an enforceable order.

I also called attention at that time to another statement in the pleadings filed by the Attorney General in that same case wherein the Attorney General said:

Section 7 of the War Labor Disputes Act is ratified and confirmed in Executive Order 9017 without changing the nature of the Board's function or the effect of its orders.

On the basis of those statements of the Attorney General, I would like to ask you this: Is there any constitutional power vested in the President of the United States to enforce by any means an unenforceable order?

Mr. BALL. I would say this: That if these orders are merely advice, then what Congress has done, as the Attorney General contends, is to set up a great machinery which in the net result means no more than that this body of men can give to the President of the United States advice that he receives from his office boy and certainly advice does not justify the seizure of property simply because that advice is rejected. I know of no constitutional right of the President of the United States to enforce by any means an unenforceable order and I take it that the Attorney General's argument logically and necessarily implies, when he says that these orders are unenforceable, that they are unenforceable by administrative process as well as by judicial process.

That, as you know, is exactly the bill of goods that he sold the Court of Appeals of the District of Columbia.

Mr. CURTIS. And the decision was based upon that?

Mr. BALL. That is right.

Mr. CURTIS. Likewise, the Attorney General stated in those same pleadings in that case—

The War Labor Board's orders are not legally binding on people.

If an order is not binding upon anyone, is there any legal authority vested in anyone to enforce such an order?

Mr. BALL. The two things are contradictions in terms.

Mr. CURTIS. That is right. Now, in reference to the declaration of war, cited by the Attorney General, it is assumed, is it not, in the pledging of the resources of the Nation, that the declaration of war means in accordance with law; does it not?

Mr. BALL. I would assume that all of us would give our hearty assent to the statement in the declaration and at the same time assume that since we are fighting our war for the preservation of our constitutional rights that it is implied that the war would be waged with full respect for those rights.

Mr. CURTIS. As a matter of fact, in pledging the resources of the country to the winning of the war, it would include the labor resources of the country, but that would not give the President authority to put into effect or declare a labor-draft law without an act of Congress; would it?

Mr. BALL. I would be as happy as an attorney to defend a labor union against that type of action as to defend Montgomery Ward's principle in this case.

Mr. CURTIS. Mr. Ball, the contention was made by Mr. William Davis of the War Labor Board and it was affirmed by the Attorney General, that section 7 of the Smith-Connally Act, the War Labor Disputes Act, and section 3 of that same act, had the same scope, that section 3 applied to everything, to all sorts of businesses that section 7 applied to. Do you agree with that statement?

Mr. BALL. I most heartily do not and I don't see that anybody, lawyer or not, who reads the language of that bill could feel other than that such a contention is absurd. It would be just as logical to say that section 7 has the same scope as the other section of the act which prohibits political contributions by labor organizations and the relationship between those two sections is no greater.

Mr. CURTIS. Is there anything in the Smith-Connally Act that makes a ruling of the War Labor Board a prerequisite to the seizing provided for in section 3, assuming that it was applied to a plan coming within the scope of that language?

Mr. BALL. Absolutely not. The legislative history makes it clear that Congress never intended that there be any relationship between the War Labor Board orders and the seizure part.

Section 9 of the Selective Training and Service Act already gave the President power to seize plants under certain conditions. Where a plant refused to accept a war contract for the production of certain munitions which are listed, the President upon that refusal could seize the plant and use it as a Government arsenal for the production of that matériel of war.

If a plant, having taken a contract for the production of war matériel, failed to produce in the quantity or the quality that was expected of it, the President could then exercise the power and seize that plant. They were manufacturing plants making war matériel.

All that section 3 did is to give one further ground to the President of the United States for seizing plants, mines, and facilities equipped

for the manufacture, production, or mining of materials necessary in the war effort and that other excuse was the labor disturbance.

Not a single word in section 3 refers in any way to any order of the War Labor Board. It does not refer to the War Labor Board by name or by inference in any part of section 3.

Mr. CURTIS. And section 3 is the only section in the Smith-Connally Act dealing with the subject of seizure, is that right?

Mr. BALL. The only section in any statute that our astute Attorney General could offer as an excuse for this unconstitutional act.

Mr. CURTIS. And the obvious purpose of legislation dealing with seizure was to continue the manufacture and flow of war equipment, weapons, and so forth, is that right?

Mr. BALL. And the congressional debates show that very clearly, sir.

Mr. CURTIS. Yes; and a retail store and a mail-order house are not within that scope, are they?

Mr. BALL. By no stretch of the imagination.

Mr. CURTIS. If they were, there was no suspension of operations at Chicago in the war properties at the time of the seizure, was there?

Mr. BALL. There was none.

Mr. CURTIS. That is all.

The CHAIRMAN. There was a labor dispute, wasn't there?

Mr. BALL. There was. How real and substantial it was might be a matter of opinion.

The CHAIRMAN. In your prepared statement, Mr. Ball, on page 3, you say:

Because the Board and the President had no legal right whatever to force Ward's to obey the Board's order, Ward's could not take the case to court. When a public official has no power to do more than give advice, the courts will not listen to a law suit which claims that the advice is bad. Courts will act only when legal rights have been violated. Although the Board was making many threats against employers who refused to obey its orders, those threats were clearly bluffs. The court will not permit themselves to be used merely to call a bluff.

Was that your opinion prior to the circuit court of appeals' decision or was it based on that decision?

Mr. BALL. That was the opinion, sir, that I gave to the company and which was the reason why the company in December of 1942, was unable to go to court. In other words, we would have been seeking, sir, the protection of the courts long before we did if there had been the shadow of authority or color of authority for the Board order in 1942.

The CHAIRMAN. I think you gave him sound advice, but I am wondering why you did go into court after that in an effort to enjoin the War Labor Board's action.

Mr. BALL. For the simple reason that we did not believe, when the Smith-Connally Act was passed, that this Congress did not intend section 7 to provide for a hearing and an order and to have that hearing and order remain meaningless and we did not anticipate, sir, that the Attorney General would argue that even after the passage of the Smith-Connally Act the War Labor Board's orders do not affect legal rights, are not legally binding, and are merely advice.

The CHAIRMAN. Finally, I do not understand your last answer when I compare it with your first.

You said in 1942 that the War Labor Board's orders did not involve anybody's rights and were not binding.

Mr. BALL. There was no War Labor Disputes Act, sir, until June of 1943.

When in June of 1943, over the veto of the President, the Congress passed the War Labor Disputes Act, for the first time the War Labor Board had some statutory authority to issue orders.

Looking at the situation presented by section 7 of the Smith-Connally Act, we felt that Congress intended that the Board should have the power by section 7 to issue orders which would do exactly what their terms stated they would do, that is, provide the terms which shall govern the relations of the parties.

We felt, therefore, that when the Board, properly exercising the power which Congress had given it by section 7, issued an order, that that order did fix legal rates and was legally binding. Therefore, we said if we did not believe that the War Labor Board had violated the very restrictions which were placed on it by the same section 7, this order would be something that we would have to obey whether we believed it to be wise or unwise, but we said:

This order, issued by a Board which now has statutory authority, however, has been issued by this Board in violation of the express limitations upon its authority, placed by Congress in section 7.

Therefore, it being a question whether they had obeyed the law, there was now a justiciable controversy and that justiciable controversy, which is a legal term which I am sure I need not elucidate to you but is merely a question of whether the court will listen to the controversy or not—that justiciable controversy we felt existed by virtue of the intent of Congress to give this Board some power.

Mind you that the Supreme Court in this same *Shields* case that I cited earlier said in connection with an order of the Commission, under an act of Congress that made no provision for any penalties or for any court review or for any court enforcement—nevertheless, the Supreme Court said as follows:

The language of the provision points to definitive action which the Commission must determine after hearing.

We cannot think that a determination so prescribed and safeguarded was intended to have no legal effect. On the contrary, in view of the nature and purpose of the proceeding, we must regard the determination as binding.

We felt that under the law, as laid down by the Supreme Court of the United States, exactly the same situation applied to the orders of the War Labor Board, so we went to court, thinking, "fine, the courts are now open because there is a controversy," but when we got to court we were amazed because the Attorney General filed the pleading to which Mr. Curtis referred, in which the Board said, "Congress did not do anything by passing section 7."

The Attorney General said, "Even after section 7 was passed, the Board orders remain just as they were before the passage of section 7," that is, not legally binding. They do not—and I quote again—"fix or alter the legal rights of parties."

I quote still a third time, "They are merely advice," which presumably one could observe or not as he saw fit.

It was upon the Attorney General's argument to that effect that he based his motion to dismiss and we were as surprised as you are by

that position, because if we had felt that that was a sound position of law, it would not, sir, have been necessary for us to have gone to the courts, because we could say, "You have given us advice but we do not believe that it is sound advice. We respectfully differ with you as we may sometimes differ with a Government agency or Government official who may give us advice but does not implement that advice."

The CHAIRMAN. If I understand you correctly, the statement on page 3, which I quoted, was your opinion in 1942 and after the passage of the War Labor Disputes Act you changed that opinion.

Mr. BALL. I did, sir; yes.

The CHAIRMAN. You have returned to it because of this second court of appeals decision?

Mr. BALL. I have not changed my opinion, sir, and, in fact, to bring the record up to date, the Attorney General has gone into court and asked Judge Goldsborough to grant a rehearing. That rehearing has been set, I believe, for June 15.

I shall be in that court, sir, anxious and earnestly resisting that because I think the Attorney General is giving wrong advice to the Board in this matter and wrong advice to the court in this matter as he has in these other matters that we discussed here.

I think that he has done a very strange thing, because if he is right in his position and these War Labor Board orders are merely advice, how then can it be said that the President has the right to seize property merely because someone does not accept the advice that he or his advisers have given a person?

The CHAIRMAN. I don't understand then, Mr. Ball, why you put this statement in your prepared address here to this committee.

You say:

Because the Board and the President had no legal right whatever to force courts to obey the Board's orders, Ward's could not take the case to court.

Mr. BALL. That is right. That is the old order of 1942 and I felt, sir, that this committee without this statement would be as confused by the mental contortions of the Attorney General as we have been trying to follow his reasoning in his handling of these various matters, unless I made the statement.

The CHAIRMAN. Mr. Ball, you stated a while ago, in answer to somebody's question, that you did not think the rights of Ward's would be properly protected unless you required the Government's agent to commit some overt act with reference to taking over the property, the seizure of the property. Do you mean by that that you thought it was necessary to protect the legal rights of Ward's that actual physical force be applied in the ejection of Mr. Avery from the plant?

Mr. BALL. I would say, sir, as my opinion as a lawyer, that I never would have anticipated that to enforce an order of the President the Attorney General would have had so little confidence in the courts that he would not, first, have turned to them rather than turn to the bayonets of the Army.

The CHAIRMAN. But that is not in response to my question.

Mr. BALL. It is, sir, because you have asked me what I thought before this matter happened and it had not occurred to me that it would ever be necessary to force such an overt act.

I might say that whatever Mr. Avery did, he did out of his own decision in this matter, but had I been advising him I would have

said that before he had a right to bring an action for trespass or the corporation had a right to bring an action for trespass against a man who acted in the guise of a Government official, to do an illegal act there would have to be a trespass committed.

The CHAIRMAN. Coming on the property without permission is a trespass, isn't it?

Mr. BALL. I don't know that they were on the property without permission. They were there as gentlemen and it had not been our attempt to bar gentlemen who might have business to transact with us, to keep them off the premises.

The CHAIRMAN. You might make that argument as of April 26, but after they had read the order of Mr. Avery and they came back on the 27th with the deputy marshals, you knew then what their intention was.

Mr. BALL. They did not come back—they came back on the 26th with the deputy marshals, to keep the record straight, sir.

The CHAIRMAN. I believe you are right. They came back with the deputy marshals.

Mr. BALL. And when the deputy marshals were asked, first, whether they had a court order to enforce, they said "No."

They were asked what they proposed to do about enforcing this order and they had no suggestions to make and, therefore, their presence, as far as we know, did not alter the picture in the slightest.

The CHAIRMAN. If the deputy marshals had taken Mr. Avery by the arm and started him out of the building, don't you think that that would have been sufficient overt act—

Mr. AVERY. Why surmise? They did not do it.

Mr. BALL. The point about it is that they did not offer to do it and I don't think we need speculate about what did not happen.

The CHAIRMAN. You are not responding.

Mr. BALL. I would say that if the marshals had committed a trespass that would have been a sufficient trespass.

The CHAIRMAN. I am asking you a direct question based on the statement of facts.

Mr. BALL. Will you give me the question, then, sir?

The CHAIRMAN. I asked you in your opinion as a lawyer if the deputy marshals had taken Mr. Avery by the arm and walked him out of the building, would not that have been sufficient to establish all the legal rights you are seeking?

Mr. BALL. As a lawyer I have long since learned the futility of giving advice in a hypothetical situation that did not arise. That situation just did not arise.

The CHAIRMAN. You don't want to answer, do you?

Mr. BALL. I see no necessity, sir, to do so.

The CHAIRMAN. It is a fact that Mr. Avery, whether with your advice or without, insisted on being bodily carried out of that plant.

Mr. BALL. He made no such insistence, sir. He simply said that he would not surrender the premises to those who had no right to demand it from him.

The CHAIRMAN. Didn't he tell Mr. Biddle that these marshals were not sufficient force?

Mr. BALL. No; I do not recollect any such statement.

Mr. AVERY. May I say a word about that?

The CHAIRMAN. You testified about it yesterday, Mr. Avery. If you want to say something, go ahead.

Mr. AVERY. You were looking for an answer. Why do you not accept the simple, specific information you have and stop trying to distort this into some tricky trap to get someone in, that will not succeed?

The CHAIRMAN. As I told you yesterday, Mr. Avery, I am trying to find out what was in your mind about this thing.

Mr. AVERY. How do you think you are going to do that?

The CHAIRMAN. By asking questions.

Mr. AVERY. Why don't you ask me?

The CHAIRMAN. I asked you yesterday.

Mr. AVERY. Yes; and I told you. Do you think Mr. Ball—

The CHAIRMAN. Can you say something more about it?

Mr. AVERY. Do you think Mr. Ball knows more about what was in my mind?

The CHAIRMAN. He is your lawyer. Sometimes a lawyer knows what is in a man's mind.

Mr. AVERY. In this case he did not happen to know that, because what was to be done under those circumstances was an evolution, sir. We did not have a plan by which we were going to force people to do certain things in certain emergencies.

I was insistent on one simple point, as has been stated in several cases, that I had actually—and that proves true—a responsibility, as the chief executive of that organization, to guard it and as these pressures came along from people who obviously were without authority it was my determination that the thing that had happened the night before, by which I would be in some wise whisked out of the thing through having given up, would not occur and that I should, myself, do nothing, take no steps that would indicate the acceptance that in the last words of the Attorney General he almost pleaded that I do, that I concede to his authority by giving up, and I said to that, "I shall not move a step. I will take no action that will indicate the abandonment of my responsibility."

That is what I did and that is exactly how that came out. It did not happen to be a matter of advice for either of the gentlemen who sat close to me.

The CHAIRMAN. What did you mean by that statement?

Mr. AVERY. Just what I said.

The CHAIRMAN. Can you elucidate on that?

Mr. AVERY. I don't think so, any further. If you want to ask questions, go ahead. It is as plain as day.

The CHAIRMAN. Did you mean that you wanted them to carry you out?

Mr. AVERY. Certainly not. That seems to be the thing that you would like in some way to get into the record, but that is not true.

The CHAIRMAN. I would like to know what you did mean. What was it that you wanted them to do?

Mr. AVERY. I wanted not to give up my responsibility and to make no contribution that could be interpreted as abandoning my trust.

The CHAIRMAN. I understand that and I think you are perfectly sincere about it, but I am earnestly and honestly trying to find out what you had in your mind.

Mr. AVERY. Just exactly what I have told you several times.

The CHAIRMAN. Did you have the use of physical force in your mind?

Mr. AVERY. I had in mind doing nothing that could be interpreted as laying down my personal responsibility as the chief executive of that organization.

The CHAIRMAN. You knew, of course, that they were not going to leave there without getting possession?

Mr. AVERY. I did not know anything of the kind. That is what you think you know.

Mr. BALL. And I might answer that that was not in my contemplation at any time, because it seemed to me, up to the last minute, that it was incredible that the United States Attorney General, the chief law officer of the United States, would resort to martial law instead of seeking the aid of the courts.

The CHAIRMAN. You said a while ago, Mr. Ball, that you never heard of such a thing happening before. Don't you know that there are numerous cases, prior to the *Montgomery Ward case*, where the Army did take possession of plants with soldiers in battle dress and even with machine guns?

Mr. BALL. I do not know, sir, what the circumstances surrounding those seizures were.

The CHAIRMAN. Didn't you read the stories about the North American Aviation plant where they went in with machine guns and set them up in the yard, troops with bayonets?

Mr. ELSTON. Will you yield? I was asking about plants similar to Montgomery Ward & Co. and the aviation company, to which you refer, and all other seizures of such plants, mines, or facilities as are described in section 3.

The CHAIRMAN. Of course we all know—and no point is being made about that in this discussion—that this is the only mail-order house that has ever been seized, so that is not the point. The point was that the gentleman said he had never heard of such a thing as soldiers coming in with bayonets. As a matter of fact, they have done it in numerous cases.

Mr. BALL. I assume, sir, that the Army has taken possession of plants in other cases where it may have had a legal right to do so and upon their legal right to do so I do not pass judgment. Whether it was done with force, I do not know. I never assumed that it was done forcefully in the manner in which this was done.

The CHAIRMAN. Don't you know as a matter of fact that this is the only case where the owner of property has resisted to the extent of requiring force, actual physical force?

Mr. BALL. Will you read the question?

(Pending question read by reporter.)

Mr. BALL. I do know that this is the only case where the Army has been used to seize a retail business.

The CHAIRMAN. Isn't it the only case where any agency of the Government has been required to bodily remove a manager of the property from the premises?

Mr. AVERY. They were not required.

The CHAIRMAN. That might be question of debate for a long time, so I won't go into that.

Mr. BALL. The difficulty comes in that it is impossible to answer a question that contains a word of that kind that would imply, by my answer, something other than the facts as I know them.

The CHAIRMAN. The point I am making is that in every other case the thing that has happened is the same thing that has happened in your Hummer plant.

Mr. BALL. And, sir, in the Hummer plant the Government had the legal right to seize the property and we showed what we regard as respectful law and order by our cooperation.

The CHAIRMAN. I want to ask you about that Hummer plant. Is that owned by Montgomery Ward?

Mr. BALL. It is.

The CHAIRMAN. Is it a separate corporation?

Mr. BALL. It is not.

The CHAIRMAN. It is a part of the Montgomery Ward corporation?

Mr. BALL. Yes, sir.

The CHAIRMAN. Are your other manufacturing plants also a part of the Montgomery Ward corporation?

Mr. BALL. Yes, sir.

The CHAIRMAN. There are no separate corporations or subsidiary corporations?

Mr. BALL. There are not, sir, no fictions.

The CHAIRMAN. Mr. Ball, are you familiar with the decision of the Kentucky court in the *Ken-Rad Tube & Lamp Company case*?

Mr. BALL. I have not read the decision, but I know that that plant was a plant engaged in war production.

The CHAIRMAN. Yes; but the court in the decision said—I haven't got it before me, although I have read it—that if there never had been a War Labor Disputes Act the President had authority to seize that property.

Mr. BALL. I fully expressed my opinion on the constitutional issues, no matter what that district court may have said, in my prepared statement.

The CHAIRMAN. I think Mr. Avery said on yesterday that some deferments from the draft had been secured for employees of Ward's. Can anybody give us any information as to the number and why they were secured?

Mr. BALL. I will be happy to give you information about it, sir. If you will recall, the selective service regulations authorize occupational deferments on a temporary basis, classifying necessary men in war production, necessary men in support of the war effort as class 2-A. The regulations say—

That activities supporting the war effort include those activities which provide food, clothing, shelter, health, safety and other requisites of our daily life.

In other words, everything in our normal economic system comes within the scope of those regulations. We have applied in connection with our Chicago properties and our other retail stores and mail-order houses for temporary deferments in the spirit of those regulations in exactly the same way that other retail merchants and all businesses of all characters have applied. In that sense, I assume that the war effort is as wide as the Nation.

The CHAIRMAN. Do you have any idea how many of those there were?

Mr. BALL. There are very few. I think there were a total of less than 200 in Chicago in all of the period and all of them, as I understand it, were on a temporary basis and most of those men or a large number of them are now in the armed services.

We have 19,000 employees from the company, you understand, in the armed services.

The CHAIRMAN. Mr. Ball, there is something said here about the question of bargaining in good faith. As a lawyer, I am sure that you agree with me that a company can bargain under the National Labor Relations Act in good faith and never reach an agreement on anything.

Mr. BALL. As I understand the law, sir, the good faith must include a willingness to contract and it would be pretty difficult under the wide powers of making inferences of fact from very little evidence, which the National Labor Relations Board possesses, for anybody, any employer who acted with any degree of unreasonableness in his negotiations to escape those charges.

The CHAIRMAN. The point that I am getting at is this: That you know and I know that the Wagner Act does not require an agreement.

Mr. BALL. No. In other words, it would be true that the union, for example, could take, make a demand which would be on the face probably absurd and there is nothing in the Wagner Act that could compel either party to reach an agreement under those circumstances.

The CHAIRMAN. There is nothing in the Wagner Act that could ever be used to force Montgomery Ward to agree to a closed shop or union shop or maintenance of membership, is there?

Mr. BALL. No, sir; and there is nothing in the Wagner Act or economic situation that requires that those demands necessarily should be granted.

The CHAIRMAN. Mr. Ball, don't you think that you could go in court now and file a suit against the Government for the use, occupation, of Montgomery Ward property during the time they held possession?

Mr. BALL. The difficulty, sir, would be to prove any actual damage from the physical occupancy. As you recall, the use of property by the Government, as the basis of an action in the Court of Claims, is a somewhat limited one which has to show the value of the property and, as a matter of fact, the fictitious character of the so-called occupation would as a practical matter defeat the remedy that you suggest.

The CHAIRMAN. It has been stated here that the company lost a lot of business on account of that. Wouldn't that be a factor which could be injected into that suit?

Mr. BALL. Not as I understand it, sir, in the Court of Claims, which would be only for the appropriation of the physical property and not for the consequential damages that might flow from it.

The CHAIRMAN. I believe you stated that you were preparing to go into court after Mr. Avery was removed from the property.

Mr. BALL. We had a draft and were working busily on it at the moment we got word of the Attorney General's action.

The CHAIRMAN. You could have gotten in court then?

Mr. BALL. We think so. That was not against the United States, but against Wayne Chatfield Taylor.

The CHAIRMAN. That is the way the *Ken-Rad Tube and Lamp* case was brought against the Army officer who had charge of the plant.

Something has been said here about the Government turning back possession in order to keep the judge from making a decision. I think I am correct in this: The case would have become moot at any time even if it had been 6 months later when the Government released the property, would it not?

Mr. BALL. It would have sir.

The CHAIRMAN. So that if the district court had rendered a decision and either party had appealed that decision before a final decision could have been received, it might have become moot through the same process?

Mr. BALL. It might have, sir, but there was always the likelihood with the expedition of appeals of that character that it could have reached at least one higher level of judicial review before mootness.

The CHAIRMAN. I am, personally, sorry that it became moot.

Mr. BALL. We are very much so, sir.

The CHAIRMAN. I would have liked to have seen that decision rendered. It might have helped this committee in some of its problems.

Mr. BALL. It might furnish some idea to the committee, but the fundamental issues would have remained, I think, in any event, with this committee.

The CHAIRMAN. Mr. Elston has a question.

Mr. ELSTON. Mr. Ball, do you know of any reason why the contract of the company with the union should have been renewed in order to have obtained an election?

Mr. BALL. None, whatever. In fact, our whole position was that rather than that helping the holding of an election, an adherence to that order would have made an election almost an illegal possibility on a fair and legal basis.

Mr. ELSTON. As a matter of fact, later they did have an election and they did have a contract extended.

Mr. BALL. That is right.

Mr. ELSTON. And you have not had the contract extended yet?

Mr. BALL. The terms that have never been put in force, sir.

Mr. ELSTON. Yet they are still insisting on the extension?

Mr. BALL. That is right.

Mr. ELSTON. That is all.

The CHAIRMAN. I have this Ken-Rad decision, and I want to read one paragraph of it into the record. In the opinion of the judge there appears this paragraph:

I thoroughly conclude that without an act of the Congress there was sufficient authority by the terms of the Constitution, itself, to justify the action of the President in this case. The President has no power to declare war. That belongs exclusively to Congress, but when war has been declared and is actually existent, the functions of Commander in Chief become of the highest importance and his operations in that connection are entirely beyond the control of the legislature. There develops upon him, by virtue of his office, a solemn responsibility to preserve the nation, and it is my judgment that there is specifically granted to him authority to utilize all resources of the country to that end.

Mr. BALL. May I comment upon that, sir?

The CHAIRMAN. Yes.

Mr. BALL. That statement was pure dictum because it was not necessary to the decision of the court that that seizure was justified by the statutes.

I would also say, for the reasons set forth in my written statement, that that expression in the language of the court is a very dangerous doctrine.

Mr. CURTIS. May I ask a question?

The CHAIRMAN. Yes.

Mr. CURTIS. Whose decision or opinion is it?

The CHAIRMAN. The judge of the District Court, State of Kentucky. His name is MacSwinford, dated May 9, 1944, in the western district of Kentucky, Owensboro district, Case No. 132, *Ken-Rad Tube*

and *Lamp Corporation v. Carroll Badeaux*. He was the Army officer in charge of the property.

Mr. CURTIS. Where and by whom was that judge appointed?

The CHAIRMAN. I have no information on that subject.

Mr. CURTIS. I haven't either.

Mr. ELSTON. I think I know. He serves in Kentucky in a district which adjoins my district. He has been on the bench, as I recall it, about 6 years. He obviously was appointed by President Roosevelt, but I am not in any sense of the word reflecting on the judge.

Referring to the opinions now of courts, of course, we can go on at great length and read from the opinions of courts, but I would like just to read from one court, a higher court than the U. S. district court, a decision recently rendered, and that is the opinion of Justice Murphy in a case decided in 320 of the U. S. 81, as follows:

It does not follow, however, that the broad guaranties of the Bill of Rights and other provisions of the Constitution protecting essential liberties are suspended by the mere existence of a state of war. It has been frequently stated and recognized by this Court, the Supreme Court of the United States, that the war powers, like the other great substantive powers of government, are subject to the limitations of the constitution.

Mr. BALL. With that we subscribe, sir.

Mr. ELSTON. So that if the opinion of the court, District Court of the Eastern District of Kentucky—or whatever district it is in Kentucky—is correct, it would mean the suspension of the constitutional guaranties, or the guaranties of the Constitution, to every citizen, wouldn't it?

Mr. BALL. That would be the only logical, inevitable conclusion to be drawn from it.

Mr. ELSTON. It would mean, wouldn't it, that the President, and the President only, has the power to indicate what plants he wanted to seize?

Mr. BALL. That is right.

Mr. ELSTON. That no court could pass upon the question of whether the President was right?

Mr. BALL. That is right. That, sir, is the doctrine advanced by the Attorney General.

Mr. ELSTON. And the Attorney General advanced the doctrine that the courts neither had the right to pass on the gravity of the emergency or the necessity of the seizure?

Mr. BALL. That is right. That is the position of the Attorney General.

Mr. ELSTON. If that is true and it is also true, as he contended, that the President has these powers regardless of any acts of Congress, then the President is the government, isn't he?

Mr. BALL. He is the sum total of all the powers of government, then. Mr. ELSTON. He is the executive, legislative, and judicial departments of government?

Mr. BALL. That is right.

Mr. ELSTON. And anybody aggrieved by any act of his would have no appeal to any court or any power?

Mr. BALL. And I think it is not necessary for anyone to attach a label to that. The American public understands the label that applies to that assumption of power.

The CHAIRMAN. I did not get that last.

Mr. BALL. I simply said, sir, that it seemed to me that that was complete dictatorship.

The CHAIRMAN. Mr. Ball, you are not contending that even though, in your opinion, the seizure was illegal, that you could not have collected for the value of the property if they had taken it and kept it?

Mr. BALL. We would have tried to have done so.

The CHAIRMAN. Well, you know you could have.

Mr. BALL. I think so; yes.

The CHAIRMAN. What?

Mr. BALL. I think so, yes.

The CHAIRMAN. That is all.

Mr. BALL. May I, while the committee is in session, say that I would like to introduce in the record, if they are not already there, this file of the affidavits which we submitted in the district court at Chicago and, also, the copies of the two briefs which we filed there, which I think give in detail the answer to some of the cases which the Attorney General referred to in his testimony here?

The CHAIRMAN. I think the Department of Justice has furnished each member of the committee with a copy of the briefs of both the plaintiff and the defendant in that case.

Mr. BALL. Are they, then, part of the record?

The CHAIRMAN. We have not actually made them a part of the record, no. They are on file with the committee. I don't think we care to incorporate them here.

Mr. BALL. Then as to this set of affidavits, which are not a part of these briefs, I would like to give this to the committee and place it in the record.

The CHAIRMAN. Without objection, I will receive those.

(The document referred to is as follows:)

AFFIDAVITS FILED BY MONTGOMERY WARD & CO.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated, et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

Stuart S. Ball, being upon oath first duly sworn, deposes and says:

That I am secretary of Montgomery Ward & Co., Inc.; that the National Labor Relations Board has ordered an election to be held among some of the employees at work on the Chicago properties of Montgomery Ward & Co., Inc., seized by the United States Government; that this election is to take place on Tuesday, May 9, 1944, between the hours of 9 a. m. and 4 p. m., to determine whether they wish to be represented for purposes of collective bargaining by local 20, United Retail, Mail Order, and Warehouse Workers of America, Congress of Industrial Organizations, which union called the strike prior to the seizure of the properties involved in this case.

Affiant further states that since the seizure of these properties, the sales of the company have steadily declined with relation to sales a year ago, and that many communications have been received by the former management from customers canceling orders already placed or announcing that they will make no purchases so long as the Government is in possession.

Further affiant sayeth not.

STUART S. BALL.

Subscribed and sworn to before me this 5th day of May 1944.

[SEAL]

PHILLIS BEST, Notary Public.

436 INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.
United States of America, Plaintiff, v. Montgomery Ward & Co., Incorporated, et al., Defendants. No. 44-C-480]

Now come the defendants, pursuant to leave of court first had and obtained, and file the affidavits of Gordon H. Anderson, Alan Ladd, Oswald Burnett Higgins, Ralph G. Crandall, A. M. Adams, and Stewart S. Ball.

WINSTON STRAWN & SHAW,
Attorneys for Defendants.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.
United States of America, Plaintiff, v. Montgomery Ward & Co., Incorporated, et al., Defendants. No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Gordon H. Anderson, being first duly sworn on oath depose and state that I am the assistant to Rowland S. Stevens, vice president in charge of merchandising for Montgomery Ward & Co., Inc.; that I have read the affidavit of Clifton E. Mack, filed by the plaintiff herein; that I am familiar with the transactions covered by the contracts described particularly in paragraph 3 of the Mac affidavit; that all of these contracts related to the purchase by the Treasury Department Procurement Division of low priced mens', womens' and childrens' shoes normally carried in stock by the company as to which customer demand was much reduced because of the introduction of shoe rationing; that said contracts were negotiated on behalf of the company at the company's office in New York City; that said contracts related to shoes then held in stock by the company's mail-order houses, retail storas, and warehouses in various parts of the United States; that the total amount of said shoes sold from stock carried on the Chicago properties of Montgomery Ward & Co., Inc., amounted to approximately \$318,000; that all of the remainder of such shoes were filled from the stocks located in other parts of the country.

Further affiant sayeth not.

GORDON H. ANDERSON.

Subscribed and sworn to before me this 2d day of May 1944.

ROSE M. LEONI, Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, eastern division.
United States of America, Plaintiff, v. Montgomery Ward & Co., Incorporated, et al., defendants. No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Lane Ladd, being first duly sworn, on oath depose and state that I am assistant manager of the department of Montgomery Ward & Co., Inc., which handles all priority, rationing, pricing and related problems; that I am familiar with the various applications for priority assistance made by the company from time to time; that I have read the affidavit of G. Lyle Belsley filed by the plaintiff in this case, together with the material attached thereto, called exhibits A and B.

Exhibit A consists of seven applications on Form WPB-541 (PD-1A). Five of these seven are applications for assistance in obtaining commodities to be exported to various foreign countries; these commodities were in every instance merchandise regularly stocked by Montgomery Ward & Co. and other retailers in the same general field; and all five applications relate to commodities which are normally carried for export as well as domestic sales by Montgomery Ward & Co.

One of the remaining two applications is for the acquisition of materials to be used by the Wardway Paint Works, located at Chicago Heights, Ill.; this application had no reference to any operations conducted at any properties of the company located in the city of Chicago, Ill.

The remaining application for priority assistance is for procuring waterproof watch cases, of the same character as customarily sold by Montgomery Ward & Co. at retail and by others merchandising said commodities.

Exhibit B attached to the affidavit of G. Lyle Belsley contains various applications on Form WPB-547 (PD-IX), which are applications widely used by distributors in obtaining priority ratings on merchandise to be bought for resale. These applications have been filed for the purpose of replenishing stocks of merchandise

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO. 437

normally sold at retail by Montgomery Ward & Co. Similar applications are employed for the same purpose by all other distributors at retail who purchase articles or commodities directly from manufacturers.

By far the largest part of these applications cover merchandise sold elsewhere than on the Chicago premises of Montgomery Ward & Co., Inc.

Further affiant sayeth not.

LANE LADD.

Subscribed and sworn to before me this 2d day of May 1944.

M. FLORENCE MONRO, Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division.
United States of America, Plaintiff, v. Montgomery Ward & Co., Incorporated, et al., Defendants. No. 44-C-480]

STATE OF ILLINOIS, County of Cook, ss:

I, Oswald Burnett Higgins, being first duly sworn, depose and say:

That I am general traffic manager of Montgomery Ward & Co., Inc., at its plant in Chicago, Ill., and have been employed in that capacity continuously since June 1, 1938.

In connection with the effect of the strike at the company's Chicago plant commencing April 12, 1944, on other unions or plants, affiant states that the company customarily employs independent trucking concerns to do certain hauling for it, and at the time of the strike had contracts with the Willett Co., the Bucholz Trucking Co., and the Motor Express Co., to perform various trucking services; that the employees of the Willett and Bucholz concerns were members of locals affiliated with the International Brotherhood of Teamsters affiliated with the American Federation of Labor; that the employees of the Motor Express Co., were members of an independent local union unaffiliated with either the Congress of Industrial Organizations or the American Federation of Labor; that for a few days following the commencement of the strike, employees of these trucking concerns refused to go through the picket lines established by the striking union. However, commencing at 8 o'clock in the morning of April 22, 1944, the American Federation of Labor truck drivers, being those employed by the Willett and Bucholz concerns, resumed uninterrupted deliveries for their respective trucking services to and from the Chicago plant and continued that service uninterruptedly from that time on.

With respect to railroad deliveries to and from the Montgomery Ward plant at 618-619 Chicago Avenue during the period of the strike, affiant states that the Chicago, Milwaukee & St. Paul Railroad, the railroad serving the plant, and its union employees rendered normal service. Affiant further states that when the question of supplying the plant with additional services, or services in greater volume than customarily used because of diminution of trucking traffic in the early days of the strike arose, affiant was informed by the operating heads of the Chicago, Milwaukee & St. Paul Railroad that Mr. George Whitney, president of the Brotherhood of Railway Trainmen, had issued orders to members of his union that they should participate in all normal services for the plants but should not participate in services not normal.

Affiant further states the fact to be that certain additional services were performed by the Milwaukee Railroad during some of the days of the strike through work performed by supervisory help of the railroad.

Affiant further states that the effect of the strike in this particular was not spreading but was steadily diminishing prior to Government seizure of the plant.

Further affiant sayeth not.

OSWALD BURNETT HIGGINS.

Subscribed and sworn to before me this 2d day of May 1944.

Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated, et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS

County of Cook, ss;

I, Stuart S. Ball, being first duly sworn, on oath depose and state:
That I am the secretary of Montgomery Ward & Co., Inc., and one of the defendants in the above entitled lawsuit.

That as secretary of the said corporation I am in charge of the law department of Montgomery Ward & Co., Inc.

That on the 5th day of October 1943, Montgomery Ward & Co., Inc., filed suit in the District Court of the District of Columbia for an injunction and a declaratory judgment against the members of the National War Labor Board and Fred M. Vinson as Economic Stabilization Director, asking that an order of the National War Labor Board dated August 20, 1943, imposing union maintenance, the check-off of union dues, and compulsory arbitration of all grievances upon six retail stores of Montgomery Ward & Co., Inc., be declared illegal as in violation of the provisions of section 7 of the War Labor Disputes Act, and asking that the defendants be restrained from taking any steps to enforce such order. This case was docketed as case No. 21483 in the said District Court of the District of Columbia.

On the 21st day of January 1944, the defendants in case No. 21483 through their attorneys, Francis M. Shea, Assistant Attorney General, and others, filed their motion to dismiss and for summary judgment, alleging as the main ground in support thereof the absence of a justiciable controversy. The points and authorities filed by the defendants in support of these motions asserted that the orders of the National War Labor Board were not "legally binding," that said orders "do not fix or alter the legal rights of the parties," and that such orders merely constituted "advice" which the parties are not required by any provision of law to accept.

That the said motions to dismiss were argued before the District Court of the District of Columbia on March 13 and 14, 1944, and that the court overruled said motions, stating in its opinion that—

"The court is of the opinion, construing that language and other language of section 7, that the order which the Board can pass is a justiciable one. In other words: The court is of the opinion that if the Board's proper order was not obeyed it would have the right to go into the district court and ask for a mandatory injunction to compel compliance with its order.

"And on the merits: The court thinks that the complaint sets forth a cause of action * * *

Despite such ruling, the defendants have not yet filed any responsive pleading to the complaint in case No. 21483, but have filed a petition for the allowance of a special appeal with the Court of Appeals of the District of Columbia on the same grounds as set forth in their points and authorities in support of the motions to dismiss and for summary judgment.

That on the 31st day of January 1944, Montgomery Ward & Co., Inc., filed suit in the District Court of the District of Columbia for an injunction and a declaratory judgment against the members of the National War Labor Board and Fred M. Vinson as Economic Stabilization Director, challenging the validity under the War Labor Disputes Act of the order of the National War Labor Board of January 15, 1944, relating to the Chicago properties of Montgomery Ward & Co., Inc. This is the order referred to in paragraph 10 of the complaint as the "interim order" of January 13, 1944. This case was docketed as case No. 22926 in the said District Court of the District of Columbia.

That on the 19th day of April 1944 the defendants in case No. 22926 appearing again by Francis M. Shea as Assistant Attorney General of the United States, applied for an extension of time in which to plead; that this application was not resisted by the plaintiff for reasons set forth in the letter of February 12, 1944, a copy of which is attached hereto as exhibit A and made a part hereof.

On the 11th day of April 1944 the plaintiff moved for leave to file supplemental complaint in case No. 22926, which supplemental complaint alleged the invalidity of the Board's second order in the Chicago matter dated April 6, 1944, which order is referred to in paragraph 10 of the complaint as issued "after a hearing held on March 29, 1944." Such leave was granted and the supplemental complaint was filed.

On the 13th day of April 1944 counsel for the defendants in case No. 22926 notified counsel for the plaintiff that the National War Labor Board had decided to refer the matter of plaintiff's noncompliance with the National War Labor

Board's orders of January 15 and April 6, 1944, to the President "without recommendation," but that the Board did not intend to report such noncompliance to Fred M. Vinson, Economic Stabilization Director, and that in pursuance of the agreement set forth in the letter of February 12, 1944, attached hereto as exhibit A, such reference to the President would not be made until noon of the following day. Counsel for the defendants further stated that the agreement set forth in exhibit A would be no longer observed by the defendants.

At the present time the defendants in case No. 22926 have not yet filed any pleadings, but have filed a motion for further extension of the time in which to plead in such case until after the decision by the Court of Appeals in case No. 21483. Plaintiff has filed a resistance to said motion for extension of time and the matter is now pending before the District Court of the District of Columbia.

STUART S. BALL.

Subscribed and sworn to before me this 3d day of May 1944.

MAE E. BURGESS, Notary Public.

EXHIBIT A

WASHINGTON 5, D. C., February 12, 1944.

Re *Montgomery Ward & Co., Inc., v. N. W. L. B. et al*; case Nos. 22436, 22629, and 22926

DEPARTMENT OF JUSTICE,

Washington, D. C.

(Attention: Messrs. Fanelli and Burstein)

DEAR SIR: You have requested the plaintiff in the above-entitled cases to agree to an extension of time within which the defendants may file motions to dismiss and for summary judgment or answers in these cases pending determination by the district court of the defendants' motion in the first *Montgomery Ward case*, No. 21483.

In view of your assurance that no action will be taken by any of the defendants to force compliance with the challenged orders unless advance notice and an opportunity to request a temporary restraining order is given *Montgomery Ward & Co.*, the latter is willing to stipulate with you¹ that time in the above three cases may be extended until 30 days after the district court has ruled on your motion to dismiss and for summary judgment in case No. 21483, but in no event later than April 30, 1944.

Very truly yours,

HENRY F. BUTLER.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, vs. Montgomery Ward & Co., Incorporated, et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS,

County of Cook, ss:

I, Ralph G. Crandall, being first duly sworn on oath, depose and state that I am the assistant secretary of Montgomery Ward & Co., Inc., and one of the defendants named herein; that I have held such office approximately 3 years; that I am in charge of the division of the law department of Montgomery Ward & Co., Inc., which handles the preparation of all contracts, and, as assistant secretary, I attest many of the said contracts; that I am familiar with the contracts mentioned in the affidavit of Clifton E. Mack, filed by the plaintiff herein, which affidavit I have read.

The contracts listed in paragraph 2 of that affidavit all related to the sale of arm equipment and parts shipped directly from places other than the properties of the company in Chicago, Ill.

That contracts Nos. DA-TPS-28298, DA-TPS-33876, DA-TPS-36216, DA-TPS-34114, DA-TPS-44439, and DA-TPS-46715 related to equipment shipped directly from the premises of the manufacturer, B. F. Avery & Sons Co., Louisville, Ky.; and

That contracts Nos. DA-TPS-49261 and DA-TPS-54807 covered equipment shipped directly from the premises of the manufacturer, Simplicity Manufacturing Co., Port Washington, Wis.

¹ Or consent to your motions.

In addition to the contracts mentioned above, which were listed in the affidavit of Clifton E. Mack, this company was recently awarded contracts by the Procurement Division of the Treasury Department as follows:

Contract No. DA-TPS-54411, dated March 3, 1944, accepted by the Government March 20, 1944, covering cream separators priced at \$4,128.

Contract No. DA-TPS-55744, dated March 24, 1944 (not yet completely executed), covering cream separators priced at \$880.

The cream separators covered by these contracts are located in Springfield, Ill., and are to be shipped from the company's Hummer factory at that location. Further affiant sayeth not.

RALPH G. CRANDALL.

Subscribed and sworn to before me this 2d day of May 1944.

JULIA PROCHASKA,
Notary Public, Cook County, Ill.

My commission expires September 23, 1947.

[In the District Court of the United States of America for the Northern District of Illinois, eastern division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, A. M. Adams, being first duly sworn on oath, depose and state that I am the department manager of the shoe department of the Montgomery Ward & Co., Inc., mail-order house at Chicago, Ill.; that I have read the affidavit of Clifton E. Mack filed on behalf of the plaintiff, and the affidavit of Gordon H. Anderson; that I am familiar with the circumstances concerning the purchases of shoes referred to in paragraph 3 of the Mack affidavit; that the shoes covered by the contracts mentioned in that affidavit were shoes normally carried in stock by Montgomery Ward & Co., Inc.; that I know of my own knowledge that similar purchases were made by the Procurement Division of the Treasury Department from other retailers of the same types of low-priced shoes; that the shoes so purchased were in price ranges which did not sell readily as a result of shoe rationing, and, but for shoe rationing, would have been sold in the normal course of business by Montgomery Ward & Co., Inc.

Further affiant saith not.

A. M. ADAMS.

Subscribed and sworn to before me this 2d day of May 1944.

MAE E. BURGESS, Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co. et al., defendants.* No. 44C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Mark Creviston, being first duly sworn, on oath depose and say:

I am the manager of what is known as the central repair department of the mail-order house of Montgomery Ward & Co. at Chicago, Ill., and I have been that manager since September 1, 1942.

I have read the affidavit of Charles F. Anderson, which I am advised has been filed in this cause on behalf of the plaintiff. Said Anderson has worked under my supervision in the central repair shop of Montgomery Ward & Co., Inc., as an appliance repairman, but has not reported for work since April 11, 1944. He was active in the strikers' picket line maintained before the building of the company on Chicago Avenue, in Chicago, Ill., from April 12 to April 24. At his own request he was removed from the pay roll as of April 20, 1944, receiving 2 weeks' vacation pay.

The affidavit of Charles F. Anderson is inaccurate and abounds with misstatements regarding the extent of the central repair shop and the work carried on therein. The facts with respect to this shop are as follows:

The central repair shop is a department maintained by the company within the central repair department for the convenience of its customers and for the purpose

of making minor repairs to merchandise purchased from the company and of supplying repair parts for merchandise sold by it. It is not advertised or otherwise held out to customers or prospective customers as a repair shop. It is a customer-service department in connection with the retail activities of the company.

The entire department currently employs 99 persons, of whom all, except approximately 25, are engaged in receiving certain types of repair parts and mechanical merchandise, storing it and filling orders of customers for such repair parts.

Approximately 25 persons are in a unit which is known as the central repair shop. The function of this central repair shop is merely to repair and recondition merchandise sold by the company or returned to it by its customers, or received by the company in damaged condition or damaged while stored in the company's warehouse.

The central repair shop operates as a unit and is not divided into 14 divisions as set forth in the affidavit of said Anderson. For merchandising and accounting purposes the company has several divisions, each handling its separate line of merchandise and repair parts, and repair work done on merchandise is classified for accounting and merchandising purposes in the central repair shop as being in the particular merchandising division from which the particular article initially comes.

The central repair shop does not engage in general repair work or supplying of parts except for merchandise sold by the company. From time to time customers have sent in merchandise for repair which was purchased from some concern other than Montgomery Ward & Co., Inc., and except in rare instances the company sends the merchandise back to the customer and does not attempt to make the repairs. In a few extremely rare and isolated cases where parts have been available to supply a repair part for merchandise purchased initially from other concerns, the company, as a convenience to its customer and to retain his goodwill for future sales, has endeavored to supply the repair.

In connection with the statements in said Anderson's affidavit, with respect to the manufacture of bicycle wheels, affiant states that the central repair shop does not engage in the manufacture of bicycle wheels which go out on new assembled bicycles. However, the company carries as repair parts wheels, hubs, and spokes, and sells them, either separately or assembled, as a complete wheel, at the customer's direction. If the customer desires those parts assembled as a complete wheel, the work of such assembling is done in the central repair shop. There are two employees available for this work. The only tools they use is an electric screw driver.

In connection with the statements in said Anderson's affidavit that gun parts are fabricated on a turning lathe out of steel tubing, affiant states that such allegations are not true, that on occasion a small gun part may be trimmed to fit on a turning lathe but that no other operations of that nature are carried on.

In connection with the statements of said Anderson in said affidavit with respect to hydraulic jacks, automobile heaters, automobile lights, automobile starters, generators, and storage batteries, affiant states that the statement that batteries are rebuilt is untrue; that the only work done on storage batteries is the recharging of them; that repair work is done in connection with applying new wire to armatures of motors but that the central repair shop does not build completely new armatures by winding new wire on new cores.

In connection with the statements in the said Anderson's affidavit as to the repairing, reconditioning, and rebuilding of stoves, gas heaters, electric stoves, oil stoves, etc., affiant states that none of said items are rebuilt in the central repair shop but that if items are returned from dissatisfied customers they are in some instances repaired or repainted and placed back in stock for resale.

In connection with the statements in said affidavit to the effect that the department is concerned with the repairing of electric refrigerators of all kinds and sizes, affiant says that the said statements are untrue, except that repairing of refrigerator motors initially sold by the company is carried on at the central repair shop. Affiant states that in the past year only one complete refrigerator has been in the central repair shop, and that was a refrigerator originally sold by the company on a time-payment plan, which was repossessed for failure of payments and which was taken in for cleaning and any necessary repairs before being offered for resale.

With respect to the statements in said affidavit as to the repair and rebuilding of floor sanders, paint sprayers, repair and reconstruction of deep-well systems, electric-well systems, hand pumps, water pressure systems, water heaters, and other plumbing equipment, affiant states that the only work done on these items

consists of repairs of the nature above-described. Affiant further states that the central repair shop is not equipped to completely rebuild and does not rebuild equipment of this kind.

With respect to each and all of the other items mentioned in the said affidavit affiant states that the repair work is carried out and the supplying of repair parts is purely of the nature heretofore described. Affiant specifically denies the statement in the said Anderson's affidavit that the central repair shop is engaged in the fabricating of the particular parts which are needed in the re-modeling and repairing of air compressors, cream separators, fence controls, and other farm machinery, except that affiant states that occasionally, and in rare instances, some simple part, such as an angle iron or a bolt may be bent, cut, trimmed, or fitted to the particular size needed.

Further affiant sayeth not.

MARK CREVISTON.

Subscribed and sworn to before me this 1st day of May 1944.

ROSE M. LEONI, *Notary Public*.

[In the District Court of the United States of America, for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, vs. Montgomery Ward & Co., Incorporated, et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Rowland S. Stevens, first being duly sworn on oath depose and say that I am the vice president of Montgomery Ward & Co., Inc., in charge of merchandising; that H. C. Anderson, who is the general manager of Montgomery Ward's factories, reports directly to me; that the factories are three in number, namely, the Hummer Manufacturing Co., at Springfield, Ill., the Wardway Paint Works at Chicago Heights, Ill., and the Ajax Fence Works at Fort Madison, Iowa; that the company does not own, operate, or have an interest in any other factories; that none of the factories which are mentioned are located in the city of Chicago, Ill.; that each of the three factories is in charge of a manager who operates the factory as a separate unit; that each manager has complete authority in the employment and direction of help; that each factory maintains its own banking accounts and records and pays its own pay roll directly out of such funds; that each of said factories operates entirely independent of any branch of the company except for matters of general policy handled by Mr. H. C. Anderson; that Mr. Anderson's sole staff in the city of Chicago consists of one secretary; that the products of these factories are only delivered to other branches of the company on the basis of sales to those branches, and are so treated on the books of the company; that separate profit records are kept as to the operations of these factories based upon the prices established for such sales of their products to other branches; that no shipments of the products of said factories are made to any other branch of the company except upon receipt of a formal purchase order by the said factory, or its equivalent.

That during the last year there has been no interruption of production in any of said factories as the result of a labor dispute or otherwise; that only the employees of the Hummer Manufacturing Co. are represented for collective bargaining purposes by a labor union, and that the union which has been certified as the bargaining representative for the employees at the Hummer Manufacturing Co. is the International Association of Machinists, affiliated with the American Federation of Labor; that none of the employees or their representatives in any of the three factories at any time threatened to interrupt production because of the labor disputes in the plants located at Chicago, Ill.

Subscribed and sworn to before me at Chicago, Ill., this 1st day of May 1944.

_____, *Notary Public*.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., et al., defendants.* No. 44-C-480]

Now come the defendants in the above-entitled cause, by Winston Strawn & Shaw, their attorneys, and pursuant to leave being first had and obtained, file an

additional affidavit in support of their motion to dissolve the temporary restraining order entered herein.

WINSTON STRAWN & SHAW,
Attorneys for Defendants.

Dated: May 1, 1944.

[In the District Court of the United States of America, for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated, Sewell L. Avery, Clement D. Ryan, Rowland S. Stevens, Bert F. Prall, Harold L. Pearson, Harry L. Eaton, Philip W. Harris, Harold E. MacDonald, Earl G. Ward, Leslie F. Crews, Carl D. Berry, Stuart S. Ball, Arthur R. Cahill, Robert S. Smith, John A. Barr, and Ralph G. Crandall, defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Earl Graham Ward, being first duly sworn, on oath depose and say that I am the same Earl Graham Ward who submitted an affidavit filed in this case on April 20, 1944; that I am general comptroller of Montgomery Ward & Co., Inc., one of the defendants in the above-entitled cause and I have been such comptroller for 4 years and have been employed by said company in various capacities for the past 15 years.

Affiant further states that the Hummer Manufacturing Co., of Springfield, Ill., is an unincorporated division of Montgomery Ward & Co., located entirely at Springfield, Ill.; that there are about 400 employees in said plant at Springfield, Ill.; that the normal major products of the Hummer Manufacturing Co. are cream separators and pumps, which are sold to the various branches of Montgomery Ward & Co., Inc., throughout the United States. In addition to the merchandise sold to the branches of Montgomery Ward & Co., Inc., it also produces propeller parts and carburetor parts and other miscellaneous war materials under subcontracts running directly to the Hummer Manufacturing Co. None of these war materials are handled or distributed by any other branch of Montgomery Ward & Co., Inc.

Affiant further states that the said Hummer Manufacturing Co. has a general manager, John Saxer, who has authority and who does hire all employees; that said Hummer Manufacturing Co. pays for all labor and materials and other expenditures of the plant and maintains its own bank account and also maintains its own set of books. Said plant is a complete operating unit in itself.

Affiant further states that Montgomery Ward & Co., Inc., also operates two other plants, the Wardway Paint Works, at Chicago Heights, Ill., and the Ajax Fence Works, at Fort Madison, Iowa, both unincorporated divisions of Montgomery Ward & Co., Inc., and both are in charge of managers, each of whom operates each plant as a separate unit; that such managers have complete authority in the employment of help; that each plant maintains its own bank account and records and handles its own pay roll. Affiant further states that neither the Ajax Fence Works nor the Wardway Paint Works engages in war production, although a small amount of paint is sold to Government agencies and war contractors by Wardway Paint Works; and that such sales are handled direct from the Wardway plant at Chicago Heights, Ill., and payments are made direct to it.

Further affiant sayeth not.

EARL GRAHAM WARD.

Subscribed and sworn to before me this 30th day of April 1944.

M. FLORENCE MUNRO, *Notary Public*.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, Plaintiff, v. Montgomery Ward & Co., Incorporated, et al., Defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

Earl Graham Ward, being first duly sworn, on oath deposes and says:

I am a citizen of the State of Illinois and of the United States of America residing at 955 Vernon Avenue, Winnetka, Ill. I am one of the defendants in the above-entitled case.

I have been employed by Montgomery Ward & Co., defendant above, for over 15 years. I have been employed by Montgomery Ward & Co. as general comptroller for a period of 4 years. I am fully familiar with the functions or activities of the administrative departments, retail store, mail order house, and warehouse located in Chicago, Ill.

Said corporation does not own or operate any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials of any kind or character in Chicago, Ill., nor does it engage in the manufacture, production, or mining of any articles or materials in said city.

The only activities conducted by the corporation in Chicago, Ill., consist in the maintenance of its general administrative offices and the operation of a retail mail order house and a retail store with accessory warehouse, photographic and other units. None of the properties used in these operations and which have been seized by Wayne Chatfield Taylor, Assistant Secretary of Commerce, purporting to act under the authority of the Executive order of the President of the United States dated April 25, 1944, and attached to the bill of complaint filed herein, is equipped or used for the manufacture, production, or mining of any articles or materials.

EARL GRAHAM WARD.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this 28th day of April 1944.

RUTH HAX, Notary Public.

[In the District Court of the United States for the Northern District of Illinois, Eastern Division. *United States of America, v. Montgomery Ward & Co., Incorporated, et al.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Vernon R. Edstrom, being first duly sworn, on oath depose and state that I am the manager of the Fashion Mail Order House of Montgomery Ward & Co., Inc., located in the building at No. 618 West Chicago Avenue, Chicago, Ill.; that the said Fashion Mail Order House is engaged in the filling of orders at retail received by mail, telephone or over the counter of women's and men's clothing; that the business of said house consists in the receiving of such merchandise, the stocking of it, and the filling of orders received from customers for said merchandise.

That none of the property of the company occupied by the Fashion Mail Order House is equipped for nor engaged in the manufacture, production or mining of any article or material.

Further affiant sayeth not.

VERNON R. EDSTROM.

Subscribed and sworn to before me this 27th day of April A. D. 1944.

Notary Public.

[In the District Court of the United States for the Northern District of Illinois, eastern division. *United States of America v. Montgomery Ward & Co., Incorporated, et al.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Lawrence Lloyd Footh, being first duly sworn, on oath depose and state that I am the manager of the mail-order house of Montgomery Ward & Co., Inc., located at No. 618 West Chicago Avenue, Chicago, Ill.

That the business of said mail-order house is the filling of orders received by mail, telephone or over the counter of a wide range of general merchandise; that the said mail-order house receives said merchandise, warehouses it, and fills orders when received, makes repairs on said merchandise and renders service usually incident to the general business of said house.

That the said mail-order house is not equipped for and is not engaged in the manufacture, production or mining of any articles or materials.

Further affiant sayeth not.

LAWRENCE LLOYD FOOTH.

Subscribed and sworn to before me this 27th day of April A. D. 1944.

Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated, Sewell L. Avery, Clement D. Ryan, Rowland S. Stevens, Bert R. Prall, Harold L. Pearson, Harry T. Eaton, Philip W. Harris, Harold S. MacDonald, Earl C. Ward, Leslie P. Crews, Carl D. Berry, Stuart S. Bull, Arthur R. Cahill, Robert S. Smith, John A. Barr, and Ralph C. Crandall, defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss.

Harold LeRoy Pearson, being first duly sworn, on oath deposes and says:

I am a citizen of the State of Illinois and of the United States of America residing at 70 East Cedar Street, Chicago, Ill. I am one of the defendants in the above-captioned case.

I have been employed by Montgomery Ward & Co., Inc., an Illinois corporation, also one of the defendants herein, for approximately 15 years. At the present time I am vice president and treasurer of said corporation. I am fully familiar with the functions or activities of the administrative departments, retail store, mail-order house and warehouse located in Chicago, Ill.

Said corporation does not own or operate any plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials of any kind or character in Chicago, Ill., nor does it engage in the manufacture, production, or mining of any articles or materials in said city.

The only activities conducted by the corporation in Chicago, Ill., consist in the maintenance of its general administrative offices and the operation of a retail mail-order house and a retail store with accessory warehouse, photographic, and other units. None of the properties used in these operations and which have been seized by Wayne Chatfield Taylor, Assistant Secretary of Commerce, purporting to act under the authority of the Executive order of the President of the United States dated April 25, 1944, and attached to the bill of complaint filed herein, is equipped or used for the manufacture, production, or mining of any articles or materials.

HAROLD LEROY PEARSON.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this 28th day of April 1944.

RUTH HAX, Notary Public.

[District Court of the United States for the Northern District of Illinois, Eastern Division. *United States of America, v. Montgomery Ward & Co., Incorporated, et al.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Walter Maurice Horton, being first duly sworn, on oath depose and say that I am the manager of the Chicago Retail Store of Montgomery Ward & Co., Inc., which store is located on the first and second floors and basement of the property at No. 619 West Chicago Avenue, Chicago, Ill., together with an associated warehouse in the property at No. 600 West Erie Street, Chicago, Ill.

That the business of said retail store is the selling at retail of a wide range of general merchandise and the performance of services normally incident to such sales.

That said retail store is neither equipped for, nor engaged in the manufacture, production or mining of any articles or materials.

Further affiant sayeth not.

WALTER MAURICE HORTON.

Subscribed and sworn to before me this 27th day of April A. D. 1944.

RUTH HAX, Notary Public.

[In the District Court of the United States for the Northern District of Illinois, Eastern Division. *United States of America v. Montgomery Ward & Co., Incorporated, et al.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

I, Joseph Norman Pfefer, being first duly sworn, on oath depose and say that I am supervisor of retail pools and have my headquarters in Chicago, Ill.; in my

capacity as supervisor of retail pools I am in direct supervision of the warehouse operated by the company in the city of Chicago known as the Schwinn warehouse, located at No. 3701 Cortland Street; that this warehouse is engaged solely in the receipt in quantity of retail store merchandise, consisting of shoes, sporting goods, hardware, plumbing supplies, gardening and tillage tools, which merchandise is stored in the said warehouse until ordered from the said warehouse by the said retail stores of Montgomery Ward & Co., Inc., located in various of the Middle Western States; that the plant is not equipped for the manufacture, production, or mining of any article or material; that the plant does not engage in the manufacture, production or mining of any article or material.

Affiant further sayeth not.

JOSEPH NORMAN PFEFER.

Subscribed and sworn to before me this 27th day of April, A. D. 1944.

RUTH HAX, Notary Public.

[In the District Court of the United States of America for the Northern District of Illinois, Eastern Division. *United States of America, plaintiff, v. Montgomery Ward & Co., Incorporated, et al., defendants.* No. 44-C-480]

STATE OF ILLINOIS,
County of Cook, ss:

Harold Edward MacDonald, being first duly sworn, on oath deposes and says: I am a citizen of the State of Illinois and of the United States of America residing in Glencoe, Ill. I am one of the defendants in the above-captioned case.

I am the vice president and retail sales manager of Montgomery Ward & Co., Inc., with my offices in the city of Chicago, Ill., that under my supervision Montgomery Ward & Co., Inc., maintains a department known as a display factory, which is a unit employing approximately 30 people and engaged in the preparation of advertising and display properties for use in the retail stores and catalog order offices of Montgomery Ward & Co., Inc. Such properties consist of various types of painted and printed sign cards and adjuncts thereto for the purpose of promoting the sale of the merchandise sold in the said stores and catalog order offices. The said display factory is not equipped for, nor engaged in, the manufacture or production of mining or any articles or materials other than as described above.

The only activities conducted by the corporation in Chicago, Ill., consist in the maintenance of its general administrative offices and the operation of a retail mail order house and a retail store with accessory warehouse, photographic and other units. None of the properties used in these operations and which have been seized by Wayne Chatfield Taylor, Assistant Secretary of Commerce, purporting to act under the authority of the Executive order of the President of the United States, dated April 25, 1944, and attached to the bill of complaint filed herein, is equipped or used for the manufacture, production, or mining of any articles or materials.

HAROLD EDWARD MACDONALD.

Subscribed and sworn to before me, a notary public in and for the State and county aforesaid, this 28th day of April, 1944.

RUTH HAX,
Notary Public.

[In the District Court of the United States for the Northern District of Illinois, Eastern Division. *United States of America vs. Montgomery Ward & Co., Incorporated, et al.* No. 44-C-480.]

STATE OF ILLINOIS,
County of Cook, ss:

I, Edward Wesley Romer, being first duly sworn, on oath depose and say that I am the retail advertising production manager for Montgomery Ward & Co., Inc.; with offices in Chicago, Ill.; that I have been such manager for 7 years; that at one time prior thereto I was the catalog production manager for Montgomery Ward & Co., Inc.

That Montgomery Ward & Co., Inc., operates in the city of Chicago, Ill., two photographic units; that one of them is a part of a catalog production unit and the other is a part of the retail production unit under my supervision; that I am familiar through my present responsibilities and my past responsibilities with the operation of both units.

That the work of those departments consists in the photographing of still objects and in developing the film on which such photographs are taken and mounting such film on glass to be sent to photoengravers who are independent of Montgomery Ward & Co., Inc.

That neither of the said photographic units is equipped for, or engaged in, the manufacture, production, or mining of any articles or materials.

Further affiant sayeth not.

EDWARD WESLEY ROMER.

Subscribed and sworn to before me this 27th day of April A. D. 1944.

RUTH HAX, Notary Public.

The CHAIRMAN. The committee will recess until 10 o'clock tomorrow, and I want to express the thanks of the committee to you gentlemen.

(Whereupon, at 4:20 p. m., the committee adjourned until 10 a. m., Thursday, June 8, 1944.)

INVESTIGATION OF SEIZURE OF MONTGOMERY WARD & CO.

THURSDAY, JUNE 8, 1944

HOUSE OF REPRESENTATIVES,
SELECT COMMITTEE TO INVESTIGATE
MONTGOMERY WARD SEIZURE,
Washington, D. C.

The select committee met, pursuant to adjournment, at 10 a. m., in the committee room of the Committee on Ways and Means, New House Office Building, Hon. Robert Ramspeck (chairman) presiding. Present: Representatives Ramspeck (chairman), Clark, Byrne, Dewey, Elston, and Curtis.

The CHAIRMAN. The committee will come to order, please.

The first witness this morning will be Mr. Carey, I believe. Is that the order in which you want to appear?

Mr. CAREY. That is right.

The CHAIRMAN. Mr. Carey, will you give the reporter your full name and your position with the C. I. O.?

STATEMENT OF JAMES B. CAREY, SECRETARY-TREASURER OF THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. CAREY. The name is James B. Carey. I am secretary-treasurer of the Congress of Industrial Organizations.

The CHAIRMAN. All right, proceed in your own way.

Mr. CAREY. Mr. Chairman and members of the committee:

When our nation was attacked at Pearl Harbor, the responsible leadership of both labor and management fully realized the need for a national labor policy suited to the requirements of total war.

The Commander in Chief, understanding the realities of labor relations, determined that the voluntary and cooperative use of democratic processes would more likely achieve this objective than coercive or punitive legislation. Therefore, he called upon labor and management to take common counsel for the purpose of devising a national labor policy adequate to secure the uninterrupted production necessary for the effective prosecution of the war.

Consequently, the President summoned to Washington twelve outstanding leaders of industry and an equal number of representatives of organized labor. These representatives met under the joint chairmanship of Mr. William H. Davis and Senator Elbert D. Thomas of Utah. I am sure that a full report of the proceedings of that conference, which was held on December 17 and 22, 1941, is available to your committee.

Mr. Murray, the president of the C. I. O., was a member of this conference, and participated actively and earnestly in its deliberations. Naturally, there were many issues upon which the representatives of labor and management did not agree. Upon one matter, however, there was universal agreement. Labor and industry were unanimously of the opinion that there must be a national no-strike, no-lockout policy; and that there must be appointed a National War Labor Board with authority to settle labor disputes—and to settle them finally—by the democratic procedures of mediation and arbitration. The President accepted this policy.

I call your attention particularly to the fact that the labor-industry agreement and the President's acceptance of that agreement was based upon the proposition that there should be no lockouts and no strikes in time of war. That policy made no exception for Mr. Sewell Avery or for Montgomery Ward & Co. It was a universal policy. It did not attempt to distinguish between so-called war industries and nonwar industries. At no time during the conference was it ever suggested by any representative either of labor or management that such a distinction should be drawn. At no time was it suggested by the President in accepting the deliberations of the conference that such a distinction should be drawn. At no time was it suggested by any representative of labor or management that the jurisdiction of the National War Labor Board should be limited to any particular group of industries.

It was recognized from the very beginning that the national no-strike, no-lock-out policy and the jurisdiction of the Board should extend so far as the necessities of war might require and that it would be wholly impractical to draw artificial lines for the purpose of limiting either the application of the no-strike, no-lock-out policy or the authority of the War Labor Board to deal with labor disputes.

In connection with this inquiry, I trust that your committee, Mr. Chairman, will peruse most carefully the report of the deliberations of the War Labor Conference, and the President's letter accepting the deliberations of that conference. You will find that in its very inception the national labor policy was big enough and broad enough to encompass Mr. Sewell Avery and Montgomery Ward & Co.

I might refer, Mr. Chairman, to the declarations made by President Murray in a public statement issued on December 23, 1941, and I quote:

Organized labor hails with delight the perfection of an agreement between industry, the Congress of Industrial Organizations, the American Federation of Labor, and the public which (1) is to stop strikes or any other stoppages that might interfere with production, including lock-outs; (2) gives to labor the right to conciliate, mediate, and arbitrate all disputes between workers and their employers; and (3) provides for the setting up of a War Labor Board truly representative of labor, management, and the public.

Mr. Murray further stated:

I appeal to all members of the Congress of Industrial Organizations organizations to lend every practical support they can to the officers of the various international unions, and the president of the Congress of Industrial Organizations, to provide continuity of operation and maximum production in all industries over which our labor organization has jurisdiction.

On January 24, 1942, the policy unanimously adopted by the C. I. O. executive board stated as follows:

The Congress of Industrial Organizations and American Federation of Labor recently entered into an agreement with the Government that in the endeavor to obtain maximum production to assure victory, there would be no stoppages of work and that all disputes between labor and management would be submitted to available Government machinery for peaceful settlement and disposition.

It should be emphasized that observance of the no-strike, no-lockout policy means more than a mere literal compliance with the rulings of the National War Labor Board. It means also that employers and unions will bend every effort to settle all disputes at the points where they arise. It means that they will, in all good faith, try to live together amicably. It means that both sides must seek to prevent trouble. If maximum production for the war effort is to be maintained grievances must be settled quickly and finally, and if no machinery exists for doing so in any establishment, it must be set up by mutual agreement. Any conduct which is likely to provoke hostility and bitter feeling must be avoided or abandoned. However, Sewell Avery and Montgomery Ward have followed a policy calculated to incite deep antagonisms and endless controversies. The evidence offered here will prove that the companies which Sewell Avery dominates have persistently sought to deny their employees the privileges of self-organization, that they have exhausted every device to delay and prolong the determination of bargaining representative, and that the so-called collective bargaining in which they have engaged has been a sham and a pretense. Their relations with their employees have on the whole been characterized by the belligerence and arrogance of a petty tyrant, whose narrow conception of his own interests takes precedence over the welfare of his country.

The original suggestion, within the War Labor Conference, of the national no-strike, no-lock-out policy came from the representatives of organized labor. Organized labor regards this policy as its policy, and not merely the Government's policy. And by virtue of the national no-strike pledge, organized labor has regarded itself as under a solemn obligation to use the full machinery and power of the trade-union movement to secure compliance with the national policy upon the part of recalcitrant elements within labor's ranks.

I refer, Mr. Chairman, to the statement by the C. I. O. executive board of June 3, 1942. They said:

We condemn the actions and policies of John L. Lewis as a grave danger to the security of our Nation and to the future of the workers in the entire world.

On May 14, 1943, President Murray, at the executive board policy meeting of the C. I. O., said:

The provocative acts of Lewis in precipitating the coal strike are deliberately intended to provoke unrest and to create confusion and misunderstanding.

At the same meeting the C. I. O. executive board resolved as follows:

The case of the United Mine Workers is now pending before the National War Labor Board. The membership of the United Mine Workers of America should not strike or cause any interruption of production because they know that such action can only result in aiding Hitler and the enemies of our Nation. Strikes when our country is at war endanger the Nation's security. The National War Labor Board now has a deep obligation to demonstrate to the coal miners that their cause has not been prejudiced despite any individual's arbitrary action, but rather that their meritorious case will be equitably determined.

This policy, Mr. Chairman and members of the committee, did not start at the time of Pearl Harbor. The unions desperately tried to make it possible to continue through democratic means the production necessary to defend this Nation. As early as June 5, 1941, when the International Woodworkers of America failed to respond to the acceptance of the National Defense Mediation Board's proposal President Murray of the C. I. O. directed the following communication to them, and made that statement public:

I have personally recommended the acceptance of the Board's proposals to the officers of the International Woodworkers of America. A continuation of the strike under existing circumstances is no longer regarded as being directed against the employers, but rather against the National Defense Mediation Board.

On June 15, 1941, President Murray sent the following message to Richard T. Frankensteen, urging the employees of the North American Aviation Corporation to return to work:

As President of the Congress of Industrial Organizations, I strongly urge our membership involved in the North American Aircraft strike to accept your suggestion providing for resumption of operations.

In November 1941, in a resolution unanimously passed at the C. I. O. Convention, it stated:

The Congress of Industrial Organizations will cooperate completely in the attempt to adjust all labor disputes on a voluntary basis through collective bargaining machinery established in wage agreements, and to utilize to the utmost degree the mediation facilities of the Government in their effort that no step will be left unturned to achieve a successful prosecution of our national defense program.

On December 8, 1941, President Murray, over a Nation-wide broadcast, said:

The Congress of Industrial Organizations is pledged to cooperate to the utmost with Government and industry in achieving uninterrupted and maximum production. We have proposed to Congress and the President the immediate calling of a conference of representatives of labor, industry and Government to work out by voluntary agreement the best possible methods of peacefully solving industrial disputes and to lay down basic policies governing industrial relations.

Time and again the national leaders and the international unions of the Congress of Industrial Organizations have used their machinery and their sanctions to enforce compliance with this policy upon their ranks, though this has been necessary only in a small fraction of the total number of labor disputes. Industry, on the other hand, has not assumed a reciprocal obligation. It should be and is the duty of organized industry in this country, under the national no-strike, no-lockout policy and pledge, to use the facilities and the influence of industry to secure compliance with the national policy upon the part of recalcitrants like Sewell Avery. Instead, industry has all too often sought to encourage defiance and challenge to the rulings of the National War Labor Board by those who are willing to kick the national labor policy and the National War Labor Board in the teeth. This indictment, however, does not apply to the employer members of the National War Labor Board, who have, almost without exception, used their influence and authority to secure compliance with the Board's rule. But they have not always had the support of organized American industry.

In connection with this subject, I think it necessary to comment on some statements made before this Committee on May 23, 1944, by Mr. Gerard Reilly, member of the National Labor Relations Board.

Mr. Reilly pointed out that the National Labor Relations Board had formulated a proposed rule which would give employers, with respect to whom the War Labor Board had taken jurisdiction, the right to file a petition for an election with the National Labor Relations Board in 5 days if they entertained a bona fide doubt with regard to the continuing majority status of a union which seeks to negotiate renewal of its contract. This rule was supposed to be necessitated by the "dilemma" of employers who are unable to initiate election proceedings, although they doubt that the unions with which they have had contracts continue to represent their employees. Sewell Avery is supposed to have been in this position.

The *Montgomery Ward* case should demonstrate clearly that this alleged dilemma is a fantasy engendered in the vivid imagination of Gerard Reilly. The facts presented to this committee should prove to any fair-minded person that the proposed rule is a deadly weapon with which implacable, fanatical enemies of organized labor, such as Sewell Avery, will keep labor relations in continuous eruption, and thereby seriously impair production for the war effort.

When the contract with Local 20, the union involved in this case, expired in December 1943, Avery self-righteously proclaimed that he could not renew the contract without an election because he doubted that the union still had a majority. He conveniently forgot that 1 year earlier he cried to the world that the War Labor Board had granted a closed shop when it directed that a maintenance of membership provision be included in his contract. Had that been the case, all the employees in the bargaining unit would obviously have belonged to the union when the contract terminated. But consistency, no doubt, is a virtue of no consequence to a man of Avery's heroic mold.

Be that as it may, when the election was held, and the union won by a large majority, did that settle the dispute? As you know, it did not. When Avery was informed of the election results he bluntly declared that the election didn't mean a thing. That is how much substance there is to the "dilemma" for which Mr. Reilly has so much sympathy.

This latter day history of the *Montgomery Ward* case will become typical if the proposed rule is adopted. That regulation would become an invitation to take advantage of labor's no-strike pledge. When workers enjoyed the right to strike employers rarely challenged the majority status of a union after it had been certified and had bargained collectively with an employer. It will be a bitter travesty on labor's contribution to the war effort if employers should now, in wartime, in the face of the no-strike policy, be afforded the opportunity to threaten the existence of labor unions by filing petitions for elections upon the termination of contracts. All of this because Mr. Reilly is taken in by Mr. Avery's alleged dilemma. Whereas, our present need is to promote to the fullest extent possible amicable, undisturbed relations between employers and unions, the proposed rule will go far to nullify these efforts and to encourage, instead, delays in collective bargaining with the consequent strife and turmoil which will seriously interfere with the war effort.

The CHAIRMAN. Mr. Clark?

Mr. CLARK. I have no questions at this time.

The CHAIRMAN. Mr. Dewey?

Mr. DEWEY. I am interested in this situation as the proposer of the resolution which ultimately brought this committee into being, and I again read for the record part of the resolution:

The committee is authorized and directed to make an investigation with respect to the seizure by the United States on April 26, 1944, of property of Montgomery Ward.

And at that time, and several times since, I have stressed the point that I was seeking to find if the Congress, in its zeal to prosecute the war effort, had legislatively given to the President more powers than the Congress had the authority to give; or if the Government departments, I might say, in the same zeal to prosecute the war, had read into the statutes passed by the Congress, and into the laws passed by the Congress, more authority than Congress intended.

Naturally, in the investigation of a matter such as is before the committee, the details of the strike and the labor controversy that arose at Montgomery Ward & Co., came into the picture, and probably more so than the committee had intended. But now they are in, I think that we might take advantage of their presence to see if, from the point of view of labor, there are any suggestions that might be given to this committee, so that when it comes to write a report it would be helpful to the entire labor situation.

We have before us the basic law, the National Labor Relations Act, which was passed in 1935, and under which there has been more or less 9 years of experience under very unusual conditions in this whole country, when boys that ought to be in school are now working in labor's ranks, and many women have left their household to replace their husbands who have gone to war, and are now working in industry, and other phases of the economy of our country. I am thinking in a broader way, and ask you to think with me a little bit—are there any things that have developed out of these unusual times, and in consideration of the return to the United States when that happy days comes when this war is won and our boys come home—are there any steps that we should take now as to the future; are there any things that we have discovered, labor and management, in the National Labor Relations Act, which has been put to the test during this unusual period, that should be corrected?

Should we get together or recommend, under some auspices, the getting together of labor and management—and I purposely leave out the public in this case, because the public is not experienced, probably, in the problems that enter into the desires of either management or labor—but to have such a meeting or such a conference with open mind and, with the best interests of the country at heart, make some recommendations for changes in the basic law, the National Labor Relations Act? I don't mention the War Labor Board because, by the law itself, it terminates 6 months after the hostilities are finished.

Now that is hardly a question. You might call it a little speech.

Mr. CAREY. I think it is an excellent question.

Mr. DEWEY. Contained in there are some thoughts which I would like to have you, as secretary and treasurer of one of the large national unions, give me your fair, frank point of view on—naturally it will be biased by the fact that you are representing labor, but I know you are an American citizen first, and I think we are all trying to do that which is for the best interests of the future of our country and its problems.

Mr. CAREY. We are considering, Mr. Congressman, a case now, involving one employer, Mr. Sewell Avery. He is not representative,

fortunately, of American business or the industrialists of this country. He represents one of a dwindling tribe. It is not the defects of the law that give us concern now. Here is a man that has 678 O. P. A. violations, requiring 3 injunctions in order to get him to comply with that law, which is important to the prosecution of this war. He has 235 cases before the War Labor Board; 22 of those cases are dispute cases, which involve at least 4 actions in circuit courts. He has, in addition to this case, 98 cases before the National Labor Relations Board—this makes 99. Forty of the cases are representation cases, and 59 are unfair labor practice cases. They have had cases before the Wage and Hour Administration, some time back, which were carried up to the Supreme Court.

We are dealing, Mr. Chairman, in this case, with a sweatshop employer. As I said, fortunately he does not represent the thinking of the businessmen of America. But unfortunately a great number, in ignorance of the facts in this case, came to his defense and gave him encouragement, and he has made a national issue of this question.

It is just a question of living up to the law, Congressman, that we are concerned with here, and—

Mr. DEWEY (interposing). I asked you a question about one thing, and I will be very glad to go, in due course, into those cases that you have brought up. I wanted you—I thought those cases would be brought up by the president of the local—but I was speaking to you as the secretary and treasurer of the national C. I. O. I am correct in that; am I not?

Mr. CAREY. Yes, sir.

Mr. DEWEY. And I wanted to get from you a broader point of view. Now, with all due respect, you haven't mentioned that. You immediately branched off into particular cases, unless you are making that explanation in order to show what is necessary to change in the basic law. I would like to have you, if you could, answer my general philosophical question as to the general necessity of considering the basic law and seeing if our experience under it requires and changes.

Mr. CAREY. Congressman, the point I am making is that you are commending my attention to defects in the present law, and I do not think that the law or the defects in it—or the fact that laws, as man-made, lack perfection—is the question. I think it is a question of getting Sewell Avery to comply with the present law. I can't look with favor upon a change in the law to meet this problem. I emphasized in my statement to the committee that perhaps it would be well if we got the industry organizations—the National Association of Manufacturers and the United States Chamber of Commerce—to speak out in a forthright manner on this question regarding Sewell Avery's actions during this period of war, as the C. I. O. and the A. F. of L. and their officers spoke out when they faced recalcitrant people within their ranks, and they spoke out with a degree of emphasis that was understood by the people involved.

Now, if the Congress of the United States would speak out regarding Sewell Avery, as the Congress indicated its willingness to speak out against recalcitrant labor leaders, I think that would be sufficient. Mr. Congressman, to see to it that we do not have a recurrence of a condition that we are confronted with in Montgomery Ward.

Now, perhaps that is passing the responsibility to the Members of Congress. As I understood your question, it was: What can we do

now to prevent recurrences of conditions of this type? Unfortunately, our attention is directed to the law, or to what labor is doing in its failure to provide a perfect score in its no-strike pledge and policy. Now, so long as we have Shicklegrubers, we will have wars in the world. The Shicklegrubers can rise to positions of influence and power. And so long as we have Sewell Averys that can rise to positions of influence and power in American industry, we will have strikes—all the laws notwithstanding.

Mr. DEWEY. Mr. Carey, I received a little pamphlet this morning, put out with the statement of a very important labor leader, and in just glancing through it I notice this paragraph:

Samuel Gompers taught the American labor movement to look upon all progress as insecure which was not achieved through the rigor of union self-reliance. The favors which the politicians confer are too often the bait for the hidden and barbed hook of Government control. Under such a system trade-union leadership becomes a rubber stamp of a political regime.

Now, one thing in your statement just now—my suggestion was aimed at trying to get the management and labor, after this time, to get together, have a meeting of mind to see if some of these things could not be worked out among those people who were so interdependent, and that has always been the hope, I think, of most forward-looking individuals. We have had experience in past laws, and I was talking to Mr. Richard Robinson, I think the president of the Brotherhood of American—I may have the title incorrect—but the Brotherhood of Enginemen and Firemen, and he was another union official. He met, I think, with the president of one of the eastern roads and the president of one of the western roads, and they wrote the basic Railroad Act; and I understand that he has continued as president of his union for some twenty-odd years. And we know that the Railroad Act has operated, I think, to the benefit of the railroad workers and the railroad management. And there was something that was devised, worked out, between the workers and management, and they came up together, if I am correct in my knowledge of it, before the Congress and presented the law.

Now, I can assure you that my deep interest—and I think I speak for most of the members of this committee, if not all—is to see if we can't bring out into the light some suggestions from both sides. Naturally, there is always going to be controversy between management and labor, and that is quite proper. When you have two football teams playing, both want to win—but they play under the rules. And we have had experience in the economic life of this country where we have gone ahead due to the fact that certain rules were set up that were agreed to by the teams playing under the rules, and they have been more satisfactory than rules that were forced on them.

I again ask you that direct question, whether you think there would be any advantage to the labor movement and management—who deal with it constantly and who are dependent on their work in the plants and in the mines and the factories—in having a meeting of minds and out of this decide these great problems which we have ahead of us.

Mr. CAREY. Mr. Congressman, you will notice I started off my statement, because of the importance of the point you make, showing that a conference was called of outstanding representatives of industry and organized labor, to formulate a national policy regarding labor questions during this period of war. That was carried out. Part of

that was the setting up of the War Labor Board to mediate and, if need be, settle finally all labor disputes.

Mr. Avery, testifying in my presence, indicated his dissatisfaction with our method, your method and my method, the Nation's method of settling the dispute. He wasn't satisfied with the representatives of industry; and yet, Mr. Congressman, if you will review the names of these people you will find Walter Teagle, of the Standard Oil Co., and Roger Lapham, of the west coast shipping industry, and Cy Ching, of the rubber industry, and others. The same thing is true on the labor side. And two competent men representing the Government, one the present Chairman of the War Labor Board, and another a Senator from Utah, Elbert Thomas.

They worked out the policy, worked it out successfully, and I think the evidence of that is the weapons that the men have who are engaged in winning this war.

There were a great number of problems. But how could you formulate any policy to cover a company like Montgomery Ward, headed by Sewell Avery, with the 235 cases before the War Labor Board, with the 678 violations of O. P. A., with the 98 cases before the National Labor Relations Board, and a man that is able to get at least a measure of support from the public press and from able citizens standing up and rising to his defense—when the man is engaged in a one-man rebellion? And I don't think any law will meet that if there is a constant harassment of every Government agency that attempts to apply the law in a judicial manner. Sewell Avery is unwilling to accept the recommendations of the representatives of American industry. He stands alone in that respect. I think perhaps a conference would do well, but I believe that if the chamber of commerce and the N. A. M. took the same position with regard to their recalcitrant people within American business and industry that labor takes, I don't think we would have this difficulty. I think if the chamber of commerce and the N. A. M. would speak out in the manner indicated that labor spoke out when they had recalcitrant people, I am quite sure this situation would not have arisen.

Avery spoke of racketeers in the C. I. O. Mr. Sewell Avery uses the Government and the courts, he uses this forum to carry out his own campaign of propaganda. It is a strange thing that we won that election in Montgomery Ward, in view of the campaign that Sewell Avery has been putting up, and we have to deal with human beings; and of course they have every legal device, and if they don't have enough they call for more.

They decide that the Post Office, the National Labor Relations Board, the War Labor Board, and every other agency in Government, including Congress, must take part on Sewell Avery's side in his private, individual war against labor.

Mr. DEWEY. Now, Mr. Carey, I want to interrupt you there one moment, because I cannot—although I have been accused by Mr. Goodman, and I had a few words about it yesterday morning—I cannot permit you, if you are referring to me in any respect, to say that any time that I mention labor, or mention making an investigation of labor, that I am opposed to labor.

Now, Mr. Goodman and I mentioned that yesterday morning. He stated that I was against—I have forgotten his exact words—against labor, or words to that effect, because I made inquiry into the post-office matter, the right of a person, having put his 3 cents on a letter

and having directed it to Montgomery Ward, and having it stopped, that my question about that immediately showed that I was opposed to labor.

Frankly, I don't like that. Secondly, it is unfair. Third, any Congressman that is worthy of his salt isn't going to be. If there was any threat contained in that, frankly you threaten the wrong man. I don't have to be here in Congress. I want to represent my district, because I have had 20 years' experience in Government, and I think I know what it is about, and I was trying to approach this thing fairly.

But I will just say to you and Mr. Goodman, and the president of the local, who lives in my district, that I approach all subjects over a long period—I am an older man than either of you—and there hasn't come a time in my life yet when I am afraid to do my duty, and I am not trying to seek in any way to uphold Sewell Avery, Montgomery Ward & Co., or the employees. I am trying to do what is my duty as a Congressman from that district, in which many of those employees live, and in which the factory is located, and in which Mr. Sewell Avery also lives. And I would have risen just as quickly for anyone else. That is my duty as a Congressman. And I just hope that in this consideration you gentlemen will remember that we have got the responsibility of 250,000 men and women in my own district, plus an interest and a loyalty to one hundred and thirty-odd million, the people of these United States, and that is all our endeavor is, if we are good Congressmen. And I can say that until it is proved different, that I am a good Congressman, and a good American citizen, and I am just as much interested in seeing the rights of labor protected as I am in industry's rights. But I do not like, frankly, every time that any question is asked that is not entirely favorable to labor, to be accused of being opposed to labor. My record—which anyone can read who cares to—will prove otherwise, and you will find that I, and many other Members of Congress, rise in support of labor. I voted for this War Labor Board which is now under discussion.

I just wanted to make that statement because, as the questions come out, I hope that you gentlemen will help us do our duty, which is to try and work out some satisfactory solution of this awfully complicated and most important problem that faces this country.

I sat on the subcommittee of the House considering the termination of contracts, and I have been interested in the reconversion of industry. Those are all physical matters, and yet we haven't given any consideration to the human being. There are 65,000,000 in our labor forces today, including 11,000,000 soldiers and sailors, and we have got to take care of them when they come back; and I do think—and that is the purpose of my question—I think out of it will grow, if we do our work properly, some solutions that will be beneficial and will stop or help stop future controversies of the type that are here.

There are always going to be hard-headed men on both sides, and we must approach the thing, I hope, along the lines of constructive study for the general weal.

I am sorry to have talked so long, Mr. Chairman, but I wanted to make that presentation to you openly in the court of public opinion.

Mr. CAREY. Mr. Congressman, I think you will understand how we feel about unfounded charges of racketeering. I speak with some knowledge of the C. I. O. I have held the position of secretary of that

organization since its first convention in 1938. Prior to that, and during that period, I was the president of the organization of our union in the industry I represent, radio and electrical, for 8 years. I was a general organizer for the A. F. L. Prior to that I was a local officer of a union, a committee member, a shop steward, and went through all the stages within the set-up of organized labor.

I know we are not without fault. We have, in the 6,000,000 members of the C. I. O., all the frailties of the people of the United States. I suppose we have some of the virtues. But we don't like some of the criticisms that are directed against us by irresponsible people like Sewell Avery, who said that there was racketeering among the leadership of the C. I. O.

I would like to ask you, or any member of the committee, or the newspapermen present, or Sewell Avery, to name one single, solitary racketeer in the whole C. I. O. You just could not do it; and that is true, as well, of this union that is now before this committee, the United Retail, Wholesale, and Department Store Employees of America, affiliated with the C. I. O.

But I make on reference to Sewell Avery being successful in his attempt to get Congress on his side of this question. I think he will make charges against the members of this committee, as he makes them against the members and officers of this union, as he makes them against the Post Office authorities, the National Labor Relations Board authorities, the O. P. A. authorities, the Wage and Hour Administration, and all the other representatives of Government. The man is just a soap-box orator. We have them in the ranks of labor, where they get up and denounce their Government. But we know that that wasn't constructive procedure. I don't say that he will be successful, I have confidence that he won't be; but he will charge, if this committee doesn't join with Sewell Avery in his private war, he will charge you, Congressman Dewey, with not carrying out your proper duties, he will charge you with violating the Constitution, he will charge you with the whole raft of statements that he charges every single, solitary person with whom he comes in contact that won't submit to his dictation.

You saw the three representatives of the Montgomery Ward Co. sitting before this committee yesterday and the previous day. Can you picture negotiations in good faith with those three representatives or their subordinates? Can you picture the carrying out of any policy dealing with cooperation between management and labor? Mr. Sewell Avery is opposed to collective bargaining; he is opposed to signing any type of a contract, whether it is union shop, maintenance-of-membership, or recognition of Local 20 of this union. He will be opposed to that if you have 10 elections or 20 elections or 50 elections. He will be opposed to it even if the law requires that he engage in collective bargaining in good faith. Mr. Sewell Avery will be opposed to it.

I don't think we have defects in the law. I think that the representatives of industry should give a little measure of support to the representatives of industry on the War Labor Board as labor does to the labor representatives; and don't think for one moment that we are satisfied with the present policies of the War Labor Board, or that we are satisfied with the policies of the National Labor Relations Board, or of O. P. A., or of many other agencies of Government.

The point we make is this: We obey the law, and we proceed on that basis, and we seek changes through the proper way, and we don't frame any pictures as Sewell Avery framed them out in the Montgomery Ward plant. And whatever Congress said against John L. Lewis, he did not oppose the Government taking over the mines—perhaps that is the only difference between them, but I think it is an important difference—and I have no brief for John L. Lewis, but I have less for Sewell Avery, and it is not because one represents business and the other labor.

Mr. DEWEY. I thank you for letting me take up so much time of the committee, but I did want to get that straightened out in my mind.

Mr. GOODMAN. May I answer—

The CHAIRMAN (interposing). First let us finish with Mr. Carey, and then you will be given an opportunity.

Mr. DEWEY. I did mention Mr. Goodman's name and I do think that he should be given the right to correct any misstatement that I may have made, because Mr. Goodman and I are friends and I may have misstated the thing.

The CHAIRMAN. All right. Give your full name, and connection with the union, to the reporter.

Mr. GOODMAN. Leo Goodman, Washington representative, United Retail, Wholesale & Department Store Employees of America, affiliated with the C. I. O.

In view of the fact that you mentioned the conversation we had in private I would like to state publicly that I asked you the question—were you continuing to play the company's game—and I asked you that only because you, yourself, had previously told me that you secured the facts regarding the post-office situation by telephone from Mr. Barr in Chicago, and that you had asked those questions previously, and you then repeated in essence the same questions yesterday, and I thought you were trying to press a viewpoint which Mr. Barr had given you in your conversations with him.

That was the only point of my question.

Mr. DEWEY. I am glad to have you make that statement. What you have stated is absolutely correct, but I did it, not with a view of "playing the company's game," as you express it, but of finding out whether the Post Office Department had exceeded the authority of the law, and I still think they did, and I don't believe that departments of the Government should exceed the laws and regulations set up—and that was all I wanted to bring out, and that was the basis of that.

The CHAIRMAN. Mr. Byrne?

Mr. BYRNE. Mr. Carey, your experience and background is reasonably long, considering your age, and it does seem to me that you are in a position to advise this committee on one of the very important things that we have been constituted for, and that is, to attempt to find some way to bring about complete reconciliation, or conciliation, between management, labor, and the public.

Do you find, in your experience, that there are certain elements, both in labor and in industry, that are irreconcilable to certain points of view?

Mr. CAREY. That is true; we do find that.

Mr. BYRNE. Do you find that to be rather sporadic, or is it general?

Mr. CAREY. I think it is diminishing; I think that the number is diminishing very rapidly, and I cite as an example the first case we had under the defense program, of the International Woodworkers. Through the democratic processes of the organization, that union no longer has the same officers; they have been replaced by more constructive individuals.

I think, if we applied that same procedure in industry, the stockholders of Montgomery Ward would accept a measure of the responsibility, and perhaps take the suggestion that labor makes here, of providing, as the head of a corporation as large and as important to the American life as Montgomery Ward, a change, and remove Sewell Avery, who is at the present time a disgrace to the stockholders of that corporation and to American industry. He is the source of a great number of labor disputes, not just confined to Montgomery Ward, and not even confined to the United States Gypsum Co. and the other companies that he has an influence in.

It is not surprising to us that in every company which Sewell Avery plays a part in, the number of labor disputes and the cases before Government agencies for violations of the law, will be directly in proportion to the extent of the influence he has in that corporation.

That also influences a lot of other corporations, and it makes the problem of constructive representatives of management and of labor, more difficult.

I don't think we have to have a law to eliminate Sewell Avery. I think that democracy will take care of that.

If the stockholders of Montgomery Ward had the facts, I am quite certain that that would be sufficient for them to take whatever action is necessary to provide this country, and Montgomery Ward, with a more constructive representative.

Mr. BYRNE. Now, Mr. Carey, from your broad experience—and it covers our entire country very definitely—are there many elements in industry, and also in labor, that you find difficulties with, similar to that of labor with Montgomery Ward?

Mr. CAREY. Sewell Avery, of course, is the horrible example. He is the exception. If Sewell Avery is successful, Mr. Congressman, then I am quite sure there will be an additional number; that it will no longer diminish, but will increase, because they will take a note from his book and proceed along his course of confusion, ignoring and circumscribing the law, using the courts of the land for his own purposes, and attempting to use the Government itself to carry out his own individual war against labor and collective bargaining.

Mr. BYRNE. Well, the question is, would you say that there are many in the country that you can place in the Avery category—in large business, I am speaking of now, business that does upward of an annual gross volume of, say, 600 millions of dollars, or 800 millions of dollars, or a billion dollars? Can you think of any great outstanding industry in this country, wholesale or retail, where you have not been able, at least your organization has not been able, to find a median line upon which you can agree regarding relationships between labor and industry?

Mr. CAREY. Not to the same degree as with Sewell Avery.

Mr. BYRNE. You say "not to the same degree." Give us the distinction that you have in mind.

Mr. CAREY. Some employers—in fact I would say many employers—dislike collective bargaining; they oppose it; they resist it. They resist the law before its enactment and they resist it after it is law. They will continue to deal with unions at arm's length, and will continue to fight with them, but they won't go to the same extent as Sewell Avery in his fight with his own employees. They are more responsible than Sewell Avery, and they are a little more decent. I would say that Sewell Avery is the worst example of the worst element in American business, or in American life, for that matter.

Many people will accept collective bargaining, if they are required to accept it. But as I say, it is a matter of degree. I wouldn't say that all people are alike, or that all people go to the same extent, or adopt the same means, to carry out their program.

I don't know of a single, solitary employer in this country that would be on the same level as Sewell Avery, who, during a period of war, is carrying on the type of campaign that he has engaged in. The war itself, I think, would be sufficient for most employers, if not all of them—with few exceptions, and Sewell Avery is one—to change their procedures and their methods, and even if they didn't like unions they would get along with them for a period of time if it is required by law, and if the circumstances coming out of a war would make it necessary for us to live together, even with our differences.

Mr. BYRNE. Mr. Carey, would you say, from the breadth of your experience, that there is general accord, accommodation, and comity existing at the present time between industry and labor?

Mr. CAREY. Yes, sir; and I think this Nation owes a debt of gratitude to the War Labor Board and to the people who served on that Board, in bringing it about. It would be difficult to measure the educational experiences and activity that they engage in. I think the benefits that grew out of the employer and labor representatives, with the public representatives, getting together for a common purpose, is one thing, even more than the settlement of individual disputes, that the War Labor Board has rendered to this country.

Mr. BYRNE. Don't you also believe, Mr. Carey, that Congress likewise has been constructively cooperative with labor and industry in attempting to bring about the conciliation which is essential?

Mr. CAREY. I would say yes, but too often Congress tries to settle the symptoms rather than getting down to the causes. They will think in terms of eliminating strikes, passing a law against strikes and labor disputes, as if you could pass a law eliminating a symptom without getting down to the cause.

Now before this committee we have had one of the causes of the labor dispute, and I might say, with a measure of pride, that we are delighted that we were able to quarantine the situation. It took extreme action on the part of the Government, Congress, and the agencies of Government, to keep that situation from spreading in the packing plants of Chicago, in the war industries in that area, throughout the retail, wholesale and distributive trades, and throughout this whole Nation.

Perhaps you can picture how an employee feels, a worker. It takes 4 years to process a grievance with Montgomery Ward, and the turn-over in that plant is such that if you present a case to Montgomery Ward perhaps you will be working for some other corporation for several years before that case is finally resolved, if it is ever resolved.

And the feeling on the part of the employees of Montgomery Ward is that if Sewell Avery is successful they will have a hatred of the courts because the courts were used against the workers in what they considered their rights under the laws of the land, enacted by Congress. And they will hate their Government, if their Government doesn't expect Sewell Avery to do what is expected of every other citizen. That would be unfortunate but I think that would be the development.

That is why we have been so careful and so patient in our procedure in this case.

On one occasion I addressed a local union meeting and I commended the members of that union, Local 20, for trying to make a good citizen out of Sewell Avery. The statement was quoted in the Spotlight, which one of the representatives of management referred to. Forthwith a suit was entered for a million dollars. Of course Sewell Avery is also suing, I understand, Business Week, and he is suing everybody and anybody he can sue. He is doing nothing but adopting legalistic means, and it is quite fortunate that this committee has a measure of immunity; otherwise I feel that Chairman Ramspeck would be sued, and the other members of the committee, all the members of the committee, and Congress would be sued, and the President of the United States would be sued.

In fact, as has been stated, Sewell Avery is engaged in a one-man rebellion. He hates people and he hates people because of their unwillingness to submit to his tyranny and dictation.

Well, collective bargaining cannot operate in that atmosphere. Collective bargaining requires a meeting of the minds, it requires agreement. Sewell Avery's idea of collective bargaining is that he will agree providing you agree to do it his way.

Mr. BYRNE. I am very much interested in your statement that you would defy anyone finding or claiming that there is or are so-called racketeers and dishonest leaders in your very wonderful organization. Will you kindly elaborate on that, because today we read so much in the papers about the so-called union racketeer and grafter, and all that sort of thing, that I think this is a fine forum for you, as one of the officials of your organization, to place before the public of this country and the world, the facts regarding the integrity of your organization? If you will kindly do that again I would be delighted.

Mr. CAREY. I will give a case in point, Mr. Congressman.

The Saturday Evening Post not long ago advertised that Pegler was going to present for the readers of the Saturday Evening Post an exposé of the racketeers in the C. I. O. As a responsible officer of that organization I was interested in that and called to the attention of the heads of the company putting out the Saturday Evening Post that we would be delighted to have it. But they sent a letter in which they said, "We made a typographical error, we did not refer to the C. I. O.," or rather, "we did not intend referring to the 'C. I. O.'"

Now we are criticized a lot for our activity, and I might say—to make certain that the wrong impression is not given—that we lack perfection. We don't claim to be a perfect institution. The C. I. O. is made up of human beings. I think we have less racketeering than a ministerial association, or a chamber of commerce, or, I might say—with due respect to the committee members here, that there will be less racketeers in labor even than you will have in the Congress of the United States. You will have it, certainly, in business communities of

this country, because the very nature of their work makes it necessary for all these people to give up a lot, be subject to all kinds of accusations of racketeering and so forth, while in public life. So, if anything, we make certain that our representatives will be able to stand sunlight and the glare of public attention, and we operate accordingly.

I think the C. I. O. can present to this committee or to any other group that challenge—name the racketeers, Mr. Sewell Avery, name them, and through the democratic processes of our organization we will take care of the situation.

But he doesn't name any racketeers in this union or in any other union of the C. I. O., because there are none to name. I am quite certain, with his legal talent, investigators, and the rest that he has on his pay roll, they should be able to name them if they could—but they can't.

I think that is due to democracy and I think it is attributable to the democratic procedures within the C. I. O. to eliminate them when we find them, on every single, solitary occasion, any racketeering elements in that body of American people.

Mr. BYRNE. Thank you.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Mr. Carey, I have been very much interested in your statement, and in your answers to questions that have been propounded to you by members of the committee. You have dealt, of course, almost entirely with the controversy that your organization has had with Sewell Avery and the Montgomery Ward Co. Who is right in that controversy and who is wrong, I don't believe is of so much importance to this committee as is the question of the legality of the seizure of the company by the President of the United States.

Now Mr. Dewey read to you the resolution which created this committee:

This committee is authorized and directed to make an investigation with respect to the seizure by the United States on April 26, 1944, of the property of Montgomery Ward & Co.

I am wondering if you would like to discuss that legal question.

Mr. CAREY. I would be happy to answer, to the best of my ability, any questions that you may have that I would be competent to answer. I am not a lawyer. My work has to do with the administration of an organization dealing primarily with human beings, and I wonder if we don't overemphasize some of these legal questions.

If you should ask me what the administration could do other than the administration did—speaking now of the President of the United States—in meeting this situation, I wouldn't be able to provide you with an answer.

I support the position taken by the President of the United States in seizing the Sewell Avery properties. I, however, oppose the action of the President or the representatives of this Government giving Sewell Avery back his properties before we had an enforcement of the law, before Sewell Avery agreed or demonstrated his willingness to abide by the directive of the War Labor Board. I think a mistake was made there. I think a mistake was made in having an election at Montgomery Ward. I think that was an appeasement proposition of the National Labor Relations Board. I don't think that election settled any question. I think it was merely a dodge on the part of

Sewell Avery, questioning whether or not the union represented the employees of Montgomery Ward.

With the election he is unwilling to accept the directive of the War Labor Board. I would have no suggestion to make other than if Sewell Avery, or any other employer with the record of Sewell Avery, flaunts the directives of the Government in a time of war, I would suggest that they take over his properties in the same manner that they took over the Montgomery Ward plant, and retain control of and operate the plant until such time as Sewell Avery and his associates are willing to carry out the provisions of the law.

Mr. ELSTON. Of course you wouldn't want the property of Montgomery Ward & Co., or any company, taken over unless the law permitted it?

Mr. CAREY. Well, I think the administration, especially the Commander in Chief, has a job of getting along with this war. I think he was legally correct in taking the action that he did, and I think anyone who looks into the law will recognize that the steps had to be taken.

Anyone who looks at the record of Sewell Avery will know that something had to be done, and before I would condemn the action of the President I would make a constructive suggestion of how you could receive at least compliance with the War Labor Board's directives, and if you have a War Labor Board, and it is a responsible agency of the Government, certainly its integrity should be upheld.

I don't desire to discuss the legal aspects of it. All I know is that Sewell Avery did not condemn the program and policy that was adopted at that conference on December 17 and 23, 1941; nor did Sewell Avery speak about the constitutionality of the President's order telling the people they could not strike; nor did Sewell Avery, or other people of industry, question some of the acts of Government in carrying on their procedures about the unions—

Mr. ELSTON (interposing). Now Mr. Carey, we are getting a little bit away from the question I asked you. I don't want to pin you down to court decisions because, not being a lawyer, it wouldn't be fair to do that, but as a good American citizen you believe, of course, that this is a Government of laws and not of men; don't you?

Mr. CAREY. That is correct; yes, sir.

Mr. ELSTON. And if there is no authority in law for the seizure of Montgomery Ward & Co.'s properties, you don't believe they should have been seized; do you?

Mr. CAREY. Well, sir, I cannot say that they should not have been seized. I might say that there are defects in the law—and I am not willing to admit that there are—but I think that a government that is able to seize men certainly should be able to seize property for the prosecution of the war, and if the law provides for the seizure of men and not of property, if the law can order people to do things despite their constitutional rights and privileges, certainly I think they should apply on an equal basis to the Sewell Averages.

Mr. ELSTON. Are you referring to the drafting of men for military service?

Mr. CAREY. And the orders of the War Labor Board telling people that regardless of their grievances they have to produce for the prosecution of this war; to the War Manpower rulings; to the O. P. A. rulings; and to all the other rules that they find necessary to apply in a period of war—and they certainly without any question should be applied with equal force—

Mr. ELSTON (interposing). You understand, of course, that the drafting of men for military service, and the issuing of orders by Government agencies, are by virtue of laws passed by Congress?

Mr. CAREY. That is correct.

Mr. ELSTON. But Congress has not passed any law authorizing the seizure of property, except in certain well-defined cases.

Mr. CAREY. I suppose that is a legal question that the courts will eventually decide.

Mr. ELSTON. That was a statement I was making, that Congress has provided for the seizure of property only in certain well-defined cases. Now even though you may not agree with the law, you still believe that the law should be followed, don't you?

Mr. CAREY. That is correct, and I believe that during the period of testing it would be well that we commend the citizens of this country to live up to the law or live up to the interpretation of the law by the agency required to administer that law, until such time as it is set aside.

Mr. ELSTON. Well, I can't quarrel with you on that proposition, that everybody should live up to the law.

Mr. CAREY. Congressman, my point went beyond that. The decision of the administrative agency that administers the law should be binding until the law is set aside by some higher authority.

Mr. ELSTON. Well, of course, no administrative agency has any power to do anything except what it has been granted. It can't issue orders except within the powers that are given to it by the agency that created it, and the agency that created it is Congress.

Mr. CAREY. An example of the point that I am trying to make is that the War Labor Board issued a directive; that Sewell Avery took issue with it and refused to abide by it. I believe that when the War Labor Board issues a directive that it should be carried out by Sewell Avery until such time as his opinion, which is against the action of the War Labor Board, is recognized as the law of the land.

Mr. ELSTON. Well, of course you don't criticize anybody who asserts a legal right, do you?

Mr. CAREY. I don't criticize anyone who asserts a legal right if he does it without interfering with the prosecution of the war. My remarks are directed to the present-day circumstances. I might say that we have any number of cases, for instance the orders of the Secretary of Labor setting aside contractual provisions in union contracts, and I would question whether or not that has any basis in law. I could set forth a whole series of them.

But at the present time, during this period of war, we would say to our people, "Abide by the recommendation of the National Labor Relations Board, or the Secretary of Labor, or the President of the United States, and we will find our way after this No. 1 task is taken care of."

Mr. ELSTON. In that connection let me call your attention to the War Labor Disputes Act which requires a 30-day cooling-off period before there is a strike in any company that might be labelled a war contractor. In a great many instances the cooling-off period has not taken place—you realize that, don't you?

Mr. CAREY. Yes, sir; I realize that, and that is a case in point, Mr. Congressman. We did not favor that law, but we abide by that law. We did not favor it because we thought that it was a law that

legalized strikes. We were opposed to all strikes. And if a union, under that law, wanted to engage in a strike, or if this union of United Retail, Wholesale & Department Store Employees of America wanted to engage in a strike, they would have gone through the procedure of that law. But if they didn't want to strike they would oppose going through the procedure of that law and oppose the strike. That was the position that this union and the C. I. O. took and takes in these cases.

I have difficulty in understanding how it was possible for the officers of this union to maintain the confidence of the people in this plant and prevent strikes at Montgomery Ward during this period. It is a trying situation to talk to people and get them to accept a leadership, when that leadership is being condemned, being charged with racketeering, and being criticized by the company for trying to maintain production in the establishments of Montgomery Ward, despite the record of Sewell Avery.

Mr. ELSTON. Well, that may be true, but that doesn't exactly answer my question about the cooling-off period. Your organization has never taken the position that that section of the law should not be followed, has it?

Mr. CAREY. No, sir.

Mr. ELSTON. I just wanted to clear that up because it isn't being done in some cases, and if it isn't being done it is due to the acts in the particular case and not because of any direction from headquarters; is that correct?

Mr. CAREY. That is correct; we don't favor strikes, we are opposed to them, strikes under the Smith-Connally Act, and strikes in any industry in this country—we oppose them.

Mr. ELSTON. I know you do, and you took a pledge to that effect?

Mr. CAREY. That is correct.

Mr. ELSTON. But of course you still have strikes?

Mr. CAREY. That is correct, and as I stated, as long as we have Sewell Averys I suppose we will.

Mr. ELSTON. Let's not blame everything on Sewell Avery; he may have his faults but you don't contend that he is responsible for all the strikes, do you?

Mr. CAREY. I contend that he is responsible for all the strikes at Montgomery Ward.

Mr. ELSTON. I am not talking about that, I am talking about the others. You have had strikes notwithstanding your pledge?

Mr. CAREY. That is right.

Mr. ELSTON. Which is an indication that however well-intentioned you were—and I grant that you were well-intentioned—you can't prevent strikes due to certain conditions in different parts of the country?

Mr. CAREY. You can't, without removing the causes of the strikes.

Mr. ELSTON. Have there been any lock-outs?

Mr. CAREY. Well, there are various forms of strikes and there are various forms of lock-outs, and if anything can be characterized as a legal lock-out, legalistic lock-out, we would have an example here in the case of Montgomery Ward.

Mr. ELSTON. Well, of course, a strike is where the employees go out, and a lock-out is where the employer will not permit the employees to work.

Mr. CAREY. That is the simplest form of a strike and a lock-out.

Mr. ELSTON. Have you had any lock-outs in the country where the employer has not permitted the employees to work?

Mr. CAREY. Yes, sir; I suppose we have had, but I wouldn't suggest that we emphasize the number of lock-outs in order to discredit all employers; I think that would be unfair.

Mr. ELSTON. I am not trying to make a comparison between the two; I am simply trying to find out to what extent the pledge, taken by industry and labor both, has been adhered to. It has been pretty well adhered to, has it not?

Mr. CAREY. It has been; yes.

Mr. ELSTON. As a matter of fact, the great contribution that has been made in the way of production of war materials could not have been accomplished except by cooperation on the part of both industry and labor?

Mr. CAREY. That is correct, sir.

Mr. ELSTON. I think that is all I have.

The CHAIRMAN. Mr. Curtis?

Mr. CURTIS. Mr. Carey, do you think the strike at Ward's in Chicago was a violation of the no-strike pledge?

Mr. CAREY. I think the strike at Ward's was an understandable violation of the no-strike pledge, and I made a public statement on that issue at the time, so that our position would be clear. The statement that I made is as follows:

The condition existing at the Chicago plants of Montgomery Ward & Co. is due solely to the persistent and deliberate refusal of the company to comply with the directives of the National War Labor Board.

It is the company that has gone on strike, not its employees. Montgomery Ward has brazenly flouted the Government authority set up to decide war labor disputes. It is striking against the Government.

A Government tribunal to resolve wartime labor disputes is necessary for the maintenance of labor's no-strike pledge, to which the Congress of Industrial Organizations is firmly committed. The National War Labor Board was set up for this purpose. Responsibility for any interruption of production clearly rests with the party which defies this Board's orders.

The Congress of Industrial Organizations therefore calls for immediate Government action to require Montgomery Ward to comply with the orders of the National War Labor Board, which will automatically bring resumption of normal operations at its plants.

I think it was a violation of the no-strike, no-lock-out pledge, and the responsibility for that violation was on the part of Sewell Avery.

Mr. CURTIS. Who called the strike?

Mr. CAREY. There was no strike called, but I understand, based on my experience in dealing with human beings, why the people refused to work under the conditions at Montgomery Ward's during that period.

Mr. CURTIS. Who led the strike, if there was none called; who formed the picket line?

Mr. CAREY. Well, any questions directed to me regarding the details of the situation at Montgomery Ward will be ably answered by President Wolchok of that union.

Mr. CURTIS. You don't contend that someone other than the union engineered the strike, do you?

Mr. CAREY. I would say that the members of the union quit work.

Mr. CURTIS. And you agree that that was a violation of the no-strike pledge?

Mr. CAREY. On the part of Sewell Avery; yes, sir.

Mr. CURTIS. I mean on the part of the union?

Mr. CAREY. No, sir; I don't think the action at Montgomery Ward was brought about as a result of any decision made by the union.

Mr. CURTIS. I didn't ask you what brought it about, I asked you whether or not the overt act of striking at Montgomery Ward in Chicago was a violation of the no-strike pledge?

Mr. CAREY. The union did not call the strike and the union did not want the strike.

Mr. CURTIS. There was a strike there, was there not?

Mr. CAREY. Yes, sir.

Mr. CURTIS. Was that strike a violation of the no-strike pledge?

Mr. CAREY. No, sir; not on the part of the union.

Mr. CURTIS. Why not?

Mr. CAREY. For the union to call a strike they go through a certain procedure and receive certain authorization in order to proceed, and if the union did that, and called a strike, I would say that the union had violated the no-strike pledge, but that was not true in this case.

Mr. CURTIS. Who engineered the strike and who finally called it off?

Mr. CAREY. The union urged the people to go back to work and they were successful in having the recommendations of the union carried out, but as to who engineered the strike, I would say that Sewell Avery had more to do with setting the stage for that strike than any one individual.

Mr. CURTIS. I am not asking about who set the stage, I am asking—

Mr. CAREY (interposing): I know what you are asking, I hear you.

Mr. CURTIS. I am asking you who had the men strike, who formed the picket line, who carried on the strike?

Mr. CAREY. After the strike was called?

Mr. CURTIS. You said it was never called.

Mr. CAREY. You will agree with me that I said there was no strike called?

Mr. CURTIS. I don't know, I am trying to find out from you.

Mr. CAREY. I said that the person who would be more competent to tell you the details would be the president of that union, but there was no strike called, there was no setting of plans or engineering of a strike. There were no picket lines formed until after the strike was in progress.

Mr. CURTIS. All right; who put the strike in progress?

Mr. CAREY. Sewell Avery.

Mr. CURTIS. He placed the men out there in the picket lines, did he?

Mr. CAREY. Yes, he certainly did by refusing to obey—

Mr. CURTIS (interposing). To whom did he communicate the instructions to strike?

Mr. WOLCHOK. To me.

Mr. CURTIS. To you?

Mr. WOLCHOK. Yes.

Mr. CAREY. He communicated the instructions to strike by flaunting, as I stated very clearly, the decision of the War Labor Board. He made it very clear to the public and to the officers of the union and to the employees of Montgomery Ward that he was refusing to

obey the order of the War Labor Board, and that resulted, Mr. Congressman, in the people stopping work.

Mr. CURTIS. Is the union accustomed to taking the advice of Sewell Avery?

Mr. CAREY. When Sewell Avery reaches the condition that he did, that lawless act on his part will lead to further lawlessness.

Mr. CURTIS. I will state my question another way.

Regardless of who called the strike, I would like your opinion, yes or no, whether or not that strike was in violation of the no-strike pledge?

Mr. CAREY. I would say that strike was in violation of the no-strike, no-lock-out pledge.

Mr. CURTIS. Now, do you feel that the President of the United States had authority to seize the Ward plant in Chicago for the purpose of punishing Mr. Avery?

Mr. CAREY. Mr. Congressman, the President of the United States did not like, I don't suppose, to seize Montgomery Ward. I am quite certain that he didn't seize it for the purpose of punishing Sewell Avery.

Mr. CURTIS. All right. How long had the strike been ended before he seized it?

Mr. CAREY. That is another question of detail that you had perhaps better direct to Mr. Wolchok.

Mr. CURTIS. Was there a lock-out at Ward's in Chicago?

Mr. CAREY. Yes, sir; and that was a violation of the no-strike, no-lock-out pledge.

Mr. CURTIS. When did that occur?

Mr. CAREY. It occurred as part of the whole pattern and program of Sewell Avery; he refused to engage in collective bargaining.

Mr. CURTIS. Name the employees who were refused entrance into Ward's to work.

Mr. CAREY. That would be better answered by President Wolchok; he might be able to give the names. There were a number of them. Some of them are still out, Mr. Congressman.

Mr. CURTIS. They are not on the pay roll, are they?

Mr. CAREY. They were on the pay roll.

Mr. CURTIS. You are referring to discharged people?

Mr. CAREY. Discharged, locked out, call it what you may—they are no longer on the pay roll.

Mr. CURTIS. But the employees to operate the Ward's properties in Chicago were never locked out, were they?

Mr. CAREY. Sewell Avery engaged in a lock-out of the Montgomery Ward properties.

Mr. CURTIS. On what date?

Mr. CAREY. That question, Mr. Congressman, might better be directed to Mr. Wolchok.

Mr. CURTIS. Do you know whether the doors were barred to keep them out?

Mr. CAREY. That should also be answered by Mr. Wolchok.

Pardon me just a moment until I get some discipline in my own ranks. [Laughter.]

Mr. CURTIS. I think that is all.

The CHAIRMAN. Mr. Carey, you are familiar, I presume, with the conference that was held, to which you referred, in December of 1941, called by the President and attended by representatives of industry and of labor?

Mr. CAREY. Yes, sir.

The CHAIRMAN. At that conference, according to the minutes that were furnished me by Mr. Davis, of the War Labor Board, who acted as moderator of that meeting, a resolution was offered by Mr. Meany, secretary of the American Federation of Labor, as follows:

Moved, that this conference send to President Roosevelt, as our unanimous recommendation, the three-sentence message suggested by Senator Thomas:

First. There shall be no strikes or lock-outs.

Second. All disputes shall be settled by peaceful means.

Third. The President shall set up a proper war labor board to handle these disputes.

That resolution was countered with a substitute offered by the representatives of management, which read as follows:

We offer the following substitute motion:

First. There shall be no strikes or lock-outs.

Second. All disputes shall be settled by peaceful means.

Third. The President shall set up a proper war labor board to handle these disputes.

There is a fourth provision in management's proposal which deals with the question of the closed shop. You will note that the first three proposals in both resolutions are identical in purport and in language. So I think it is fair to assume that both groups agreed on the first three. The President later wrote a letter to the conference, accepting as the agreement of the conference those three proposals:

First. There shall be no strikes or lock-outs.

Second. All disputes shall be settled by peaceful means.

Third. The President shall set up a proper War Labor Board to handle these disputes.

Afterward, of course, he did set up the Board under Executive order, which was later succeeded by the present Board under the statute.

The point I am getting at is this: The agreement on the part of both labor and management to this procedure, which in my judgment constitutes arbitration, you might say compulsory arbitration, was an agreement to a procedure which neither labor nor management had been willing to accept prior to the beginning of the war; isn't that correct?

Mr. CAREY. That is correct, sir. We were opposed to compulsory arbitration. The only difference between absolute compulsory arbitration and this procedure is that this was brought about by agreement.

The CHAIRMAN. I see. Now Mr. Carey, do you remember the hearing before the subcommittee of the Committee on Labor in November 1941 over which I presided? I believe you testified there?

Mr. CAREY. Yes, sir; I believe I did.

The CHAIRMAN. You will recall, I believe, that a proposal for compulsory arbitration was made by me at that time and opposed by you?

Mr. CAREY. Yes, sir.

The CHAIRMAN. You will also recall that the representatives of the National Association of Manufacturers also opposed the proposal?

Mr. CAREY. Yes, sir.

The CHAIRMAN. And, failing to get support from either labor or industry, the committee dropped that proposal?

Mr. CAREY. Yes, sir.

The CHAIRMAN. So the procedure agreed upon in this conference, after Pearl Harbor, was a departure from the practices and the beliefs of both management and labor, was it not?

Mr. CAREY. Yes, sir; labor had opposed compulsory arbitration.

The CHAIRMAN. And so had management?

Mr. CAREY. Yes, sir.

The CHAIRMAN. But you both agreed to it after Pearl Harbor?

Mr. CAREY. Yes, sir.

The CHAIRMAN. To aid in the speedy and expeditious prosecution of the war?

Mr. CAREY. Yes, sir.

The CHAIRMAN. And it was your understanding, was it not, as indicated by the language of both resolutions, that it included all disputes?

Mr. CAREY. Yes, sir.

The CHAIRMAN. As a matter of fact, section 7 of the War Labor Disputes Act includes all disputes that materially affect the war effort?

Mr. CAREY. Yes; and in a total war we consider that all disputes affect the war effort.

The CHAIRMAN. As a matter of fact it is the ambition of labor, in its negotiations with management, always to get a closed shop, or the nearest thing to it that they can achieve; isn't that correct?

Mr. CAREY. That is correct; yes, sir.

The CHAIRMAN. What is your definition of a closed shop?

Mr. CAREY. A closed shop is where the employer can only hire members of a union.

The CHAIRMAN. Of the particular union involved?

Mr. CAREY. Yes, sir.

The CHAIRMAN. What is a union shop?

Mr. CAREY. A union shop does not require the employer to hire only members of the union, but does require that all employees become members of the union, usually after a stated period of 30 days.

The CHAIRMAN. What is your definition of maintenance of membership?

Mr. CAREY. The maintenance of membership provision requires that all present members of a union, or those that shall voluntarily become members of the union, shall remain members in good standing for the duration of the agreement.

The CHAIRMAN. And as proposed by the War Labor Board it generally has an escape clause for present members of the union, does it not?

Mr. CAREY. The escape clause is not usually applicable during the period of the contract, but 15 days prior thereto.

The CHAIRMAN. So that with the escape clause, maintenance of membership offers the opportunity to those men in the union to retire from it or resign from it?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Does the maintenance-of-membership plan require any new employee to join the union?

Mr. CAREY. Not the maintenance-of-membership provision that is usually contained in the directives of the War Labor Board. There are some contracts that have provisions of that type. The maintenance-of-membership provision, as recommended by the War Labor

Board, provides for the escape clause and merely requires the people that join the union to remain parties to the contract for the duration of the contract. The employers are not permitted to walk out of the contract, nor are the members of the union permitted to walk out of the contract.

The CHAIRMAN. Now after the contract goes into effect, can the employer, under the maintenance-of-membership plan, employ non-union people?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Do they have to join the union?

Mr. CAREY. No, sir; but if they join the union they remain members of the union for the duration of the agreement.

The CHAIRMAN. But they are not required to become members of the union?

Mr. CAREY. No, sir.

The CHAIRMAN. And do you consider that in any sense a form of closed shop?

Mr. CAREY. It is a form of recognition, of which the closed shop is one of the forms. Maintenance-of-membership is a less satisfactory form than the union shop, and it is certainly not a union shop nor a closed shop.

The CHAIRMAN. Is it entirely satisfactory to labor, to organized labor?

Mr. CAREY. There might be some conditions where the relationship between management and the union has developed to such a degree that it would be all that is necessary. But where you have a high percentage of turn-over, or where the relationship has not developed, through collective bargaining on a friendly basis, between the company and the union, it is not satisfactory.

The CHAIRMAN. Well, do you consider this maintenance-of-membership plan, as developed by the War Labor Board, a compromise arrived at for the purposes of promoting the war effort?

Mr. CAREY. I think it was—and I might say that I played some part in one of the early decisions known as the—I will think of it in a minute—but it effectively meets the present situation.

The CHAIRMAN. Have you served on the War Labor Board?

Mr. CAREY. Yes, sir; I am now—

The CHAIRMAN (interposing). Isn't it true that this plan we call maintenance of membership was a compromise arrived at by the War Labor Board because labor, on the one hand, was seeking either the closed shop or the union shop, and the employers, or management, on the other hand, were resisting any form of a closed shop?

Mr. CAREY. I would say "yes."

The CHAIRMAN. And in order to resolve that question—which was a question that the conference held in December 1941 could not agree upon—the War Labor Board made what they considered a compromise to resolve the question of the closed shop or open shop; is that correct?

Mr. CAREY. I don't think that that was done at that conference.

The CHAIRMAN. I don't mean at the conference, it was done by the War Labor Board?

Mr. CAREY. Yes, sir.

The CHAIRMAN. After it was set up?

Mr. CAREY. After they had gained experience by their operation.

The CHAIRMAN. For the duration of the war?

Mr. CAREY. Yes, sir.

Mr. CURTIS. Mr. Chairman, will you yield for just one question?

The CHAIRMAN. In just a minute.

Mr. CAREY, if I understand your position about the case we are investigating, the *Montgomery Ward case*, it is that you think Mr. Avery, representing Montgomery Ward, regardless of his convictions as to the legality or nonlegality of the President's order, should have obeyed that order and then tested its validity in the courts?

Mr. CAREY. Yes, sir.

The CHAIRMAN. You believe that that same rule applies to labor organizations, do you?

Mr. CAREY. Yes, sir.

The CHAIRMAN. Who may feel that an order of the War Labor Board exceeds its authority, or who may feel that such an order is not fair?

Mr. CAREY. That is correct; yes, sir.

The CHAIRMAN. You recognize, of course, that on both sides of this question there are people who don't always do what they ought to do?

Mr. CAREY. That is correct.

The CHAIRMAN. All right, Mr. Curtis.

Mr. CURTIS. Prior to Pearl Harbor, prior to the declaration of war, in the absence of voluntarily accepting union maintenance contracts, or the union maintenance clause, was there any law whereby the Government could compel the acceptance of the union maintenance clause by an employer?

Mr. CAREY. No, sir.

Mr. CURTIS. That is all I wanted to ask.

The CHAIRMAN. All right, we will take the next witness. Thank you, Mr. Carey.

Mr. Wolchok, will you give your full name and connection to the reporter?

STATEMENT OF SAMUEL WOLCHOK, PRESIDENT OF UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. WOLCHOK. Samuel Wolchok, President of the United Retail, Wholesale and Department Store Employees of America, C. I. O.

Mr. Chairman and members of the committee, this hearing is being held because Sewell Avery did not lay his pistol down after Pearl Harbor but has continued to carry on his private war against labor. Not only has Sewell Avery carried on his private war against labor, but he has launched a high-powered campaign to inflame people into believing that the Government was using Nazi tactics to give special privileges to labor and to abolish the Constitution. You remember the poster that were printed, showing, on one side, Avery being carried out by two soldiers, and, on the other side, the Nazi Gestapo arresting and beating up a pushcart peddler. Of course, the propaganda campaign had no rhyme or reason. You know and I know that Sewell Avery is not exactly a peddler, nor is Montgomery Ward a pushcart.

If Churchill were here, he would say, "Some peddler, some pushcart." And just think of the idea of the Nazis tearing up the Constitution to give special privileges to labor. The only special privilege

I have ever heard the Nazis giving to working men and their leaders is the privilege of digging their own graves and being machine-gunned into them.

Absurd as all this propaganda is, yet you know and I know that is fooling a lot of people. I have come before this honorable committee of the people's representatives to appeal to you to tell the public the true facts—to help assemble and tell the facts—on this case.

Speaking for our union, let me say there has never been any question of the union getting special privileges from the Government, let alone the Government using Nazi tactics to give us special privileges. On the contrary, we have never to this day gotten justice from the Government. What has happened is simply that at the first belated attempt by the Government to give us partial justice, Sewell Avery created such a rumpus that he even frightened the Government into dropping its attempt to enforce the law.

The facts are that Sewell Avery is still defying the Government and the laws of the land—yes, and defying them in time of war when all of us, rich and poor, have a special duty of not stirring up any trouble that might affect the prosecution of the war. The facts are that the workers in Montgomery Ward, who eke out a poor living on \$20 and \$25 a week wages, have obeyed all the laws and all the directives and orders of the War Labor Board and the President, and have yet to get justice and the equal protection of the laws.

The Supreme Court of the United States bears the inscription, "Equal Justice Under Law." That is what we are fighting for: Equal justice for the poor, equal justice for the rich, equal justice for the working class—and yes—equal justice for Sewell Avery.

Before I go into details on the story of our relations with Sewell Avery and Montgomery Ward, I should like to tell you a few things about our union and about our relations with other employers generally.

Our union, the United Retail, Wholesale, and Department Store Employees of America, was organized in 1937 under a charter from the C. I. O. Let me tell you it is a tough job organizing white-collar workers—it is blood, sweat, and tears all the way.

The white-collar worker, as the Senate Committee on Education and Labor has recognized, is at the bottom of the economic ladder. He is at the bottom of the ladder in time of peace and in time of war. In time of peace white-collar wages are low and working conditions are bad because employers have huge labor surpluses of the unemployed to draw upon. The employers just have to whistle, and dozens of unemployed will come begging for a job at a pittance wage. In wartime when the labor market is tight and the employers are making money hand over fist, white-collar wages are, like other wages, kept down by the stabilization program. We are not quarreling with the stabilization program, but it is a fact that white-collar workers can't get rich during the war.

You can see, then, it is a field of rocks and stones that our union has undertaken to cultivate. In no field are the benefits of unionization and collective bargaining more needed than in the white-collar field. Most of the workers in our field are not even covered by the wages and hours law of the Fair Labor Standards Act of 1938. They are the oppressed of the oppressed. But because they are so oppressed they are afraid to join a union, which is their only help against oppression. They are afraid that if they join a union they might lose

their job—a job which, bad as it is, is the only thing they have to live on. You know how it is. A worker who draws a hundred dollars a week is much more independent, much more self-respecting, than a man or woman who makes \$20 a week.

It has been tough going to educate such people and to make them understand that they are free American citizens and not slaves of their employers. The Wagner Act has helped and helped a lot. But the Wagner Act was not an act of special privilege for labor—it was an act to free our workers from serfdom to their employers. It was an act to outlaw industrial espionage and Memorial Day massacres, to prevent employers from dismissing workers who joined a union and to require employers to bargain collectively with representatives of the workers' own choosing.

Under the protection of the Wagner Act, but mainly through our own hard work, we built up our union. We organized locals in all parts of the country, and we signed collective bargaining contracts with big stores and distributing houses throughout the country. Since 1937 we have signed thousands of contracts which contain, not wild promises but the most elementary conditions necessary for peaceful and harmonious relations between workers and employers. All our contracts contain, first and foremost, impartial machinery for the adjustment of grievances, a clause for the protection of seniority rights, proper job classifications, and in most of the cases a union preference shop, which is, of course, the worker's only real protection against the employer conspiring to break up his union and the workers having to start fighting all over again.

As to wages, before the war, the workers and the employers both agreed that the industry is horribly underpaid, and many upward adjustments were made in the direction of a fairer and more livable wage scale. During the war, when wage stabilization became the order of the day, our people were harder hit than the workers of any other industry. But no matter how unpleasant the decisions of the War Labor Board seemed to us, we obeyed and accepted them without interruption of work.

Here are some of the contracts we have signed and renewed in different parts of the country before and after Pearl Harbor:

R. H. Macy in New York covering over 10,000 people.
Gimbel's, 3,000.
Bloomingdales, 2,500.
Hearn's department store, 2,500.
Stern's, 1,500.
R. H. White in Boston, 2,000.
Butler Bros. in St. Louis, 1,000.
Rosembaum's in Pittsburgh, 500.
The Fair in Chicago, 2,000.
Boston store, Chicago, 2,000.
Marshall Field warehouses, 400.
Sam's cut rate stores (8 in number), about 2,000 people.
Safeway stores in New York, about 1,800.
Rice-Stix in St. Louis, 500.
J. C. Penny, St. Louis, 1,000.
C. F. Smith chain groceries, about 2,500 people.
Hillman's chain grocery in Chicago, 1,800.

I could go on to tell you of our contracts with national chains like Schulte's cigar stores; United Cigars; Whalen drug stores; A. S. Beck shoes; I. Miller shoes; Simco's shoes; Douglas shoes; also in other industries like the large chain bakeries—Dugan Bros. in Long Island and New Jersey; Loose-Wiles biscuits, New York, Michigan, and Missouri.

All these contracts—and I have only given you a partial list—provide for union shop, seniority rights, labor management committees. Let me emphasize that most of these contracts have been renewed during this war period without strife or strike.

I would like to dwell a little on our no-strike record during the war. After Pearl Harbor, President Murray, of the Congress of Industrial Organizations, in common with the leaders of the other national labor organizations, gave to the President of the United States a no-strike pledge. Workers were not to strike, but were to submit their disputes with employers to final adjudication by the War Labor Board. Our union has lived up faithfully, very faithfully, to the no-strike pledge. I'll explain the special circumstances of the Montgomery Ward strike in a little while.

When the unions agreed to the no-strike pledge, they did not surrender the right of collective bargaining or the protection of the workers' interest. They merely agreed not to wield the weapon of the strike and abide by the War Labor Board settlements. As a matter of fact, they did not realize how much they were giving up in the interest of the war effort.

In the spring of 1942, the President announced his general program of economic stabilization—the chief points being the stabilization of prices, wages, and profits. You know how the program has actually worked out. Profits have not been controlled; they stand today at an all-time high. Prices have been controlled after a fashion. The O. P. A. officially admits a 26 percent increase in the cost of living and makes all sorts of apologies for the figures. Wages, however, have been stabilized under the Little Steel formula, which tells you that the most you can get, if you are strong enough to get it, is 15 percent over the January 1941 rate of pay and a correction for sub-standard rates of pay. Labor does not automatically get these things in the way that the grocer and the butcher get higher prices. Labor gets these things only when it is strong enough to persuade the employer to grant them or when it is strong enough to fight the cases through the War Labor Board; but the most it can get—when it gets it—is about half of the officially admitted and no-longer-can-be-covered-up rise in the cost of living.

In other words, labor gave up the right to strike in favor of peaceful methods, and then found that its peaceful methods were limited to a ceiling of around half the admitted increased cost of living. What did labor get in return?

Labor got in return the adjudication of labor disputes by the War Labor Board whenever that adjudication can be enforced. Whenever the War Labor Board cannot enforce its awards, labor gets nothing at all—nothing but the run-around in exchange for giving up the right to strike and get whatever wages and working conditions it could get through the strike in a tight labor market.

As you gentlemen know, the War Labor Board has held that unions which come to it with an unblemished no-strike record are entitled to

a maintenance of membership clause in their contracts. Sewell Avery and his crowd have raised the cry that this means a closed shop by Government order. And then they contradicted themselves by shouting with equal vehemence that after 12 months of a maintenance of membership clause in our contract with the Montgomery Ward Chicago plant, our union represented less than 20 percent of the employees.

Obviously, the unions are not getting a closed shop or even a union preference shop when they get a maintenance of membership clause in a War Labor Board award. What they get—and remember, they get it only if and when the War Labor Board succeeds in enforcing its award on the employer—is the right to keep as members of the union those who do not choose to resign within 15 days after the signing of a collective-bargaining contract.

Speaking for our own union, let me say we're not getting much in return for what we are giving up. I say to you, gentlemen, if we did not have to live up to the no-strike pledge, if we had the right to strike for wage rises equal to the rise in the cost of living—in fact, for as high wages as the traffic will bear—if we were free from all the wartime restraints, I can assure you that we would get for our workers not a maintenance-of-membership contract but a union shop from Sewell Avery or from any employer where we have organized the workers. We would get it by our own strength and would get it without going through the long-delayed and expensive proceedings of the governmental agencies.

It is Mr. Sewell Avery and not the union who is profiting by the war restraints in labor disputes. In the ordinary course of events we would have been able to cope with Mr. Avery in the same way that the automobile workers coped with Henry Ford, or the steel workers coped with the Girdlers and the Weirs. Mr. Avery is taking advantage of the fact that we are law-abiding citizens while he lives above the law. The workers don't want to interfere with the war effort, but he doesn't care what happens to the war effort.

We knew that we were up against a tough customer when we started organizing Montgomery Ward. We knew that we could expect all sorts of fouls in the clinches. We knew that Sewell Avery was prepared to use all the power and resources of his \$83,000,000 corporation to defeat collective bargaining. We knew our opponent, but we also knew that no group of workers needed union organization as much as did the 78,000 employees of Montgomery Ward. I have told you that these employees are at the bottom of the ladder in the industrial field. And now I tell you that Montgomery Ward employees are near the bottom in relation to other store employees in the same field. The proof of this is that in wage award after wage award the War Labor Board has found that the Montgomery Ward pay scale was below the level of competitors in the same field.

When Sewell Avery talks of high principle, the Declaration of Independence, and the fifth amendment, I want you people to realize this hifalutin talk is just a cover for a speed-up system, a low-wage system, and a union-busting system.

Our first experience with Montgomery Ward dates to 1937. When our charter was granted to us by the C. I. O. on May 19, 1937, a strike was raging at Montgomery Ward's plant in Kansas City, Mo. The C. I. O. ordered us to take over the strike, since it was in our jurisdiction. That was our first acquaintance with this company and the

rotten tactics that this company has been dishing out for many years. Out of this strike grew an unfair-labor-practice case, but it took us 5 long years before an award was handed down, fought through the courts, and compliance attained. Under that award six members of our local were reinstated and the company was required to pay \$30,000 in back pay. While we were still fighting Montgomery Ward before the N. L. R. B. and in the courts, we started organizing in Chicago. On August 6, 1940, we won an N. L. R. B. election by an overwhelming majority in the Schwinn Warehouse of Chicago. After the election we negotiated for a contract but got nowhere. So we proceeded to organize the main Chicago plant—that is, both the retail store and the mail-order house.

When Sewell Avery fought the union by dismissing its members and by other methods, we filed charges of unfair-labor practices against him. We have had to do this in almost every organizing campaign we launched in any section of the Montgomery Ward system. In recent months we have abandoned the idea of filing unfair-labor-practice charges because we found that Sewell Avery's lawyers, with their unlimited funds, could delay final adjudication for years and years.

I want you to keep Sewell Avery's record on unfair labor practices clearly in mind when you are told that Sewell Avery recognizes the principle of collective bargaining. Just the other day in a proceeding before the War Labor Board, a representative of Sewell Avery stated, and I quote:

Ward's has no quarrel with the principles of unionism * * * Ward's has no quarrel with the principle of collective bargaining. Ward's stands ready to bargain collectively with any representatives selected by a majority of employees in a proper bargaining unit.

I want you to contrast these statements with the record chalked up by Sewell Avery at the National Labor Relations Board. There are over 50 cases alleging violation of the Wagner Act. Sewell Avery took four of these cases through the circuit courts of appeals, and the record shows that he lost three of them immediately. In the fourth case he won a temporary technical victory but finally complied with the N. L. R. B. order after a slight change of procedure.

I want you to contrast the assurance that "Ward's stands ready at any time to bargain collectively" with the finding of the New York State Labor Relations Board on May 8, 1942, that Ward's failed to "bargain in good faith"; and let me add that the ruling of the State board that Montgomery Ward did not bargain in good faith was sustained by the New York Supreme Court and affirmed by the appellate division.

On Lincoln's birthday, 1942, the employees of the Chicago mail-order house and the retail store voted to emancipate themselves from industrial bondage. The union received a 2 to 1 majority in the mail-order house and a 10 to 1 majority in the retail store. Since that time we have won elections in Montgomery Ward in various parts of the country.

We won in Kansas City; in Denver, Colo.; in Trenton, N. J.; Barre, Vt.; Albany, N. Y.; Detroit; in Jamaica, N. Y. In all these places we have won elections with overwhelming majorities. Most of our people thought that winning an election was winning the battle. With Sewell Avery, it turns out to be the beginning of the battle. After winning the elections in Chicago we tried to negotiate a contract—a contract that would really make the union a collective

bargaining agent that would protect employees against unjust dismissals, that would raise the pay scale to the level of competing firms, and so on. Did we get such a contract? No.

We couldn't strike. This was wartime and we were morally bound by our no-strike pledge. The case was put in the hands of the Federal Conciliation Service, and a mediator was appointed, Father Haas, who is now Bishop Haas. This eminent priest thought our demands were reasonable and Sewell Avery's labor relations policies unreasonable. That didn't convince Sewell Avery, and in fact irritated him into a blind rage. Because Business Week, a publication of the great business organization of McGraw-Hill, cited the facts as found by Father Haas and the Conciliation Service, Sewell Avery started a million-dollar libel suit against McGraw-Hill. A few months ago he started a libel suit against our union. A few weeks ago he started a million-dollar libel suit against the Chicago Sun. If you gentlemen were not protected by congressional immunity, I would warn you, "Look out! Mr. Avery is going to start another libel suit."

During the summer of 1942, the case of Montgomery Ward went to the War Labor Board. A panel was appointed to hear both sides. After the evidence was in, Dean Garrison wrote us a letter—that is, Sewell Avery and myself—asking us to get together and settle the controversy. I had met Mr. Avery once before in 1941—and gotten nowhere with him—but I went again on August 6, 1942, and had a 9-hour session with him.

Now, let me tell you, Mr. Curtis, what I meant when I said he ordered us to strike, if you don't mind. During the 9-hour conversation that I had with Mr. Avery—

Mr. CURTIS (interposing). When was this conversation?

Mr. WOLCHOK. August 6, 1942.

Mr. CURTIS. And it was at that conversation that he told you to strike in March or April of 1944?

Mr. WOLCHOK. Let me complete my statement, Congressman Curtis, and then I will answer questions.

When I was over there during this time, discussing with Mr. Avery the question on hand, there were four points involved. First, there was the question of what kind of a shop it should be, maintenance of membership, closed shop, or union shop. After 2 hours' discussion on that, we got nowhere.

Then we discussed the question of arbitration. I couldn't get anywhere at all with him after about 2 hours.

And then we discussed the question of seniority. We took it in rotation. We got nowhere on that, too.

Then finally, I offered him the following: I said, "Mr. Avery, I will tell you what we are going to do. You sign a one-sentence contract and we will settle this question."

He said, "What is it?"

"I will tell you what it is. In case of a disagreement, no matter what it is—whether it is wages, whether it is hours, or whatever it is, working conditions or what—if we cannot agree among ourselves as it goes through, between the worker and his managers, store manager or plant manager or whatever it is, who come to you and me, if we cannot agree we shall then call in an impartial man. Whatever his decision is, it shall be binding on both." I said, "That is going to be the contract."

He said, "No, absolutely no. No outsider is going to run my business."

I said, "An arbitrator is an outside man. Arbitration is a form that everybody accepts—Government, labor, anywhere; in sports, in baseball games, anywhere at all, an umpire in the business."

He said, "Nothing doing."

"Then, Mr. Avery," I said to him, "what do you expect us to do? Do you want to have strike and strife throughout your entire organization all over the country? You are located practically in every State of the Union."

He said, "Go right ahead, Mr. Wolchok, and strike your head off."

That is why I have said that he wants that.

Let me point out one more thing to you, Congressman, and I will then answer your questions. What happened during that time? I withheld that from our workers, because they were ready to strike, and I said, "No; we are going to try and try again. There are some agencies in this country who might make Mr. Avery live up to reasonable conditions."

That is why I have said to you, when you said "Who ordered a strike?" I said, "Avery ordered it." He began to order it in 1937.

Mr. CURTIS. Now, you, in your statement that he ordered this strike, knew we were referring to the strike in April or May of 1944?

Mr. WOLCHOK. Surely.

Mr. CURTIS. And you base the fact that he directed you to strike, upon that statement that he made on August 6, 1942?

Mr. WOLCHOK. No, Mr. Curtis. This is part of the direction, as I have put it, because a series of other incidents have accumulated, day after day and month after month and year after year—because this is a question of several years—and that has accumulated, which has pointed directly that all Mr. Avery wants is a strike—nothing but.

Mr. CURTIS. Now, did he ever specifically tell you to strike, and direct this strike that occurred this spring in 1944?

Mr. WOLCHOK. No; but I hope you have accepted my explanation.

Mr. CURTIS. Yes, sir. Thank you.

Mr. WOLCHOK. The first thing Mr. Avery said to me was, "You've got a contract, what more do you want?" I asked him what he meant, and it turned out that to him, winning an election was all there was to a collective bargaining contract. It was something like winning a medal or a decoration. After you win it, what else is there to do? Employee grievances? Well, the company will take care of them the way they have always done.

The attitude of Sewell Avery toward the union and toward the Government has been never to do anything until he has exhausted all the legal means of obstruction, and then to sabotage the law by obeying only the letter of the law and not the spirit. Yes, he recognizes the Wagner Act after two circuit courts of appeals have convicted his company of committing the same crime twice. He recognizes employee bargaining elections, but does he bargain with the unions that are chosen at these elections? I say "No."

The only collective bargaining contract we have ever had with Montgomery Ward was the 12-month contract signed with Local 20 in Chicago after twice being ordered by the President of the United States, and even that contract was regarded (by the company) only as "a so-called agreement." In all other cases we have never been

able to get to first base. For Detroit and Jamaica we pushed proceedings through the War Labor Board, but the company tied up the War Labor Board orders by going to the courts for injunctions.

Do you want to see what Sewell Avery means by collective bargaining? Here is the type of contract he offers. I have a type of contract here that was offered to us by the company, and if the chairman doesn't mind, I want to read one clause and then put it in the record.

The CHAIRMAN. That may be done.

Mr. VOLCHOK. Article IV of the contract deals with grievances the way the company wants to deal with them:

Grievances may be presented by an employee personally or through a union representative, as the employee desires.

A grievance may be presented first to the department manager.

Any grievance not satisfactorily adjusted within 5 days may then be presented to the management board member within whose jurisdiction the employee is employed.

Any grievance not satisfactorily adjusted within 5 days after presentation to the appropriate management board member may be presented to the house manager, or such representative as he may designate.

Any grievance not satisfactorily adjusted within 5 days after presentation to the house manager or his designated representative, may be presented to the president of the company or such representative as he may designate. The president of the company or his appointed representative will reach and report decision within 5 days.

(The agreement referred to is as follows:)

AGREEMENT

This Agreement, made and entered into this _____ day of _____, 1944, by and between Montgomery Ward & Co., Incorporated, an Illinois corporation, hereinafter called the Company, and United Retail, Mail Order & Warehouse Employees Union, Local #40, affiliated with the Congress of Industrial Organizations, an unincorporated association of Menands, New York, hereinafter called the Union.

WITNESSETH

Whereas the Company operates a mail-order house at Menands, New York; and

Whereas the Union has been certified by the New York State Labor Relations Board as the representative of all regular full-time employees and all regular part-time employees in the mail-order house, including warehouse employees in Albany and Troy, New York (excluding executives; department managers; supervisory, confidential, and protection department employees); and

Whereas the employees covered by this Agreement are the above designated employees of the Company at Menands, New York:

Now, therefore, the parties hereto agree as follows:

ARTICLE I

SECTION 1. The Company recognizes the union as the sole collective-bargaining agency for the employees above designated.

SECTION 2. The employees are free to join, not to join, or to resign from the union as they wish.

ARTICLE II

A normal week's work shall consist of forty (40) working hours. Time worked in excess of forty (40) hours in any one (1) week shall be considered overtime and compensated for at the rate of time and one-half.

ARTICLE III

SECTION 1. The minimum and maximum hourly wage rates for all job classifications covered by this contract shall be as set forth in Exhibit "A" attached hereto.

SECTION 2. The schedule of rate ranges and job classifications in Exhibit "A" shall not operate to reduce the wage of any employee.

SECTION 3. All time worked on Sunday shall be paid for at the rate of time and one-half.

SECTION 4. All time worked on holidays shall be paid for at the employee's regular rate, in addition to any holiday pay which may be due.

SECTION 5. No employee shall be required to work less than four (4) hours in any workday.

ARTICLE IV

Grievances may be presented by an employee personally or through a union representative, as the employee desires.

A grievance may be presented first to the Department Manager.

Any grievance not satisfactorily adjusted within five days may then be presented to the Management Board Member within whose jurisdiction the employee is employed.

Any grievance not satisfactorily adjusted within five days after presentation to the appropriate Management Board Member may be presented to the House Manager, or such representative as he may designate.

Any grievance not satisfactorily adjusted within five days after presentation to the House Manager or his designated representative, may be presented to the President of the Company or such representative as he may designate. The President of the Company or his appointed representative will reach and report a decision within five days.

ARTICLE V

The Company in filling vacancies and in determining lay-offs and call backs, shall consider length of service, experience, ability, and performance.

ARTICLE VI

All employees shall be granted one week's vacation with pay after one year of continuous service averaging twenty or more hours per week, and two weeks' vacation with pay after two or more years of continuous service, averaging twenty or more hours per week.

Employees shall take their first two vacations during the twelve month period following their first and second anniversary dates, respectively. Employees may take their third and subsequent vacations at any time during the calendar year, beginning with the calendar year following their second anniversary date.

At least six months must elapse between vacations, and vacations cannot be accumulated from year to year.

A holiday falling within an employee's vacation period on a day on which the employee normally works entitles him to an additional day of vacation with pay for each such holiday.

Each employee shall arrange the time at which his vacation is to be taken to the satisfaction of his department head.

ARTICLE VII

New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day shall be considered holidays. Part-time employees who have averaged at least twenty (20) hours work per week for four (4) weeks preceding a holiday and regular full-time employees will be paid for holidays if they are at work on the working days preceding and following the holiday, provided the holiday falls on a day on which the employee normally works. When a holiday falls on Sunday, the following day shall be observed as a holiday.

ARTICLE VIII

None of the provisions of this Agreement and no modification thereof shall be binding upon the Company until countersigned by the Company's Manager of Labor Relations.

ARTICLE IX

This agreement shall be and remain in force for one year from _____, 1944, and thereafter from year to year, unless either party gives written notice to the other at least thirty (30) days prior to the termination date in any year that it

does not wish to continue the agreement; provided, however, that either party may, at any time after the date hereof, cancel or renegotiate Article II or Article III, or both, by giving thirty (30) days' written notice of such cancellation or desire to renegotiate to the other party.

In witness whereof, the parties hereto have caused this agreement to be signed by their respective officers this _____ day of _____, 1944.

By _____
MONTGOMERY WARD & Co., INCORPORATED,
House Manager.
Countersigned _____
Manager of Labor Relations.
UNITED RETAIL, MAIL ORDER & WARE-
HOUSE EMPLOYEES UNION, LOCAL #40,
C. I. O.

EXHIBIT A

| Job classification | Minimum and maximum hourly rates |
|--------------------------------|----------------------------------|
| Class I-A----- | \$0. 45-\$0. 55 |
| Clerk | |
| Matron | |
| Messenger—A | |
| Package sealer | |
| Preparation clerk—Grade 1-A | |
| Scaler—A | |
| Sign-out clerk—Grade 1 | |
| Sorter—A | |
| Class I-B----- | . 51- . 65 |
| Bus boy | |
| Dish or pot washer | |
| Messenger—B | |
| Scaler—B | |
| Sorter—B | |
| Supply boy | |
| Class I-C----- | . 60- . 70 |
| Porter | |
| Class II-A----- | . 45- . 65 |
| Addresser—Grade 1 | |
| Adjuster—Grade 1 | |
| Catalog request reader | |
| Catalog sales clerk—A | |
| Checker—Grade 1 | |
| Completer packer | |
| File clerk—Grade 1 | |
| Index clerk | |
| Longhand entry clerk | |
| Lister | |
| Mail opener | |
| Order filler—A | |
| Passenger elevator operator | |
| Phone clerk | |
| Preparation clerk—Grade 2-A | |
| Pricer—Grade 1 | |
| Proofreader | |
| Record clerk—Grade 1 | |
| Returned goods clerk—Grade 1-A | |
| Scheduler | |
| Sign-out clerk—Grade 2 | |
| Single biller | |
| Special test clerk | |
| Stock helper—A | |
| Tag puller | |
| Transfer clerk | |
| Waitress and counter clerk | |
| Zoner | |

EXHIBIT A—Continued

| Job classification | Minimum and maximum hourly rates |
|---------------------------------|----------------------------------|
| Class II-B----- | \$0. 51-\$0. 70 |
| Checker-packer—B | |
| Order filler—B | |
| Package censor | |
| Packer—B | |
| Preparation clerk—Grade 2-B | |
| Scaler and biller—B | |
| Stock helper—B | |
| Class II-C----- | . 60- . 80 |
| Catalog sales clerk—C | |
| Elevator or tractor operator | |
| Freight handler | |
| Order filler—C | |
| Packer—C | |
| Paper baler | |
| Preparation clerk—Grade 2-C | |
| Stock helper—C | |
| Class III-A----- | . 51- . 70 |
| Addresser—Grade 2 | |
| Adjuster—Grade 2 | |
| Cashier | |
| Checker—Grade 2-A | |
| Correspondent—Grade 1 | |
| Divert clerk—A | |
| Error correction clerk | |
| File clerk—Grade 2 | |
| Multiple biller | |
| Order and correspondence reader | |
| Pricer—Grade 2 | |
| Priority sales clerk | |
| Receiving checker—A | |
| Record clerk—Grade 2 | |
| Refund clerk | |
| Stockman—A | |
| Time payment sales clerk | |
| Class III-C----- | . 65- . 90 |
| Mail dispatcher | |
| Receiving or shipping checker | |
| Returned goods clerk—Grade 2-C | |
| Rug or pipe order filler | |
| Stockman—C | |
| Class IV-A----- | . 55- . 75 |
| Accuracy control clerk—A | |
| Adjuster—Grade 3-A | |
| Auditor—Grade 1 | |
| Checker—Grade 3 | |
| Correspondent—Grade 2-A | |
| Distribution clerk | |
| Freight settlement clerk | |
| General cashier | |
| Information clerk—Grade 1-A | |
| Merchandise examiner—A | |
| Payment clerk | |
| Production control clerk—A | |
| Record clerk—Grade 3 | |
| Router | |
| Senior index clerk | |
| Special attention order reader | |
| Stenographer | |
| Time payment unit clerk | |
| Timekeeper | |
| Class IV-C----- | . 70- . 95 |
| Adjuster—Grade 3-C | |
| Claim clerk—Grade 1 | |
| Correspondent—Grade 2-C | |
| Information clerk—Grade 1-C | |

EXHIBIT A—Continued

| Job classification | Minimum and maximum hourly rates |
|---|----------------------------------|
| Class IV-C—Continued. | |
| Merchandise examiner—C | |
| O. S. and D. clerk | |
| Rate clerk—Grade 1-C | |
| Shipping and receiving irregularity clerk | |
| Class V-A | \$0. 65-\$0. 85 |
| Adjuster—Grade 4-A | |
| Auditor—Grade 2-A | |
| Correspondent—Grade 3-A | |
| Record Clerk—Grade 4 | |
| Special attention clerk—A | |
| Class V-C | . 75- 1. 00 |
| Adjuster—Grade 4-C | |
| Auditor—Grade 2-C | |
| Claim clerk—Grade 2 | |
| Correspondent—Grade 3-C | |
| Rate clerk—Grade 2 | |
| Special attention clerk—C | |
| Class VI-A-1 | . 51- . 70 |
| Mimeograph operator | |
| Seamstress | |
| Sign painter | |
| Stencil cutter | |
| Typist | |
| Class VI-A-2 | . 55- . 75 |
| Calculator operator | |
| Ediphone operator | |
| Receptionist | |
| Switchboard operator | |
| Teletype operator | |
| Class VI-A-3 | . 60- . 85 |
| Bookkeeping machine operator | |
| Cornelly machine operator | |
| Monogram machine operator | |
| Multigraph operator | |
| Pharmacist—A | |
| Moon Hopkins machine operator | |
| Preinterviewer | |
| Class VI-A-4 | . 75- . 95 |
| Secretary—Grade 1 | |
| Class VI-A-5 | . 85- 1. 05 |
| Secretary—Grade 2 | |
| Class VI-A-6 | . 95- 1. 25 |
| Secretary | |
| Class VI-C-1 | . 60- . 70 |
| Kitchen help | |
| Class VI-C-2 | . 60- . 80 |
| Outside laborer | |
| Painters' helper | |
| Class VI-C-3 | . 65- . 90 |
| Crater | |
| Draftsman | |
| Driver | |
| Electricians' helper | |
| Glazier | |
| Shoemaker | |
| Tailor | |
| Class VI-C-4 | . 70- . 95 |
| Assistant cook | |
| Engravers' apprentice | |
| Fireman | |
| Jewelers' apprentice | |
| Watchmakers' apprentice | |
| Watchman | |

EXHIBIT A—Continued

| Job classification | Minimum and maximum hourly rates |
|--------------------|----------------------------------|
| Class VI-C-5 | \$0. 80-\$1. 00 |
| Painter | |
| Class VI-C-6 | . 90- 1. 10 |
| Carpenter | |
| Electrician | |
| Mechanic | |
| Plumber | |
| Refinisher | |
| Repairman | |
| Class VI-C-7 | 1. 00- 1. 20 |
| Cook | |
| Pastry cook | |
| Printer | |
| Class VI-C-8 | 1. 00- 1. 50 |
| Engraver | |
| Jeweler | |
| Watchmaker | |

Mr. WOLCHOK. Now, on this question, I said to Mr. Avery, "One more step, an impartial man. How can you tell about somebody in Oshkosh, or in any part of the country, where a manager dismisses the employee? The employee might be wrong, to begin with, or maybe the manager might be wrong; but when it comes to your desk it is a one-sided story. Then an employee is fired unjustly. Hasn't this employee a right to come before an impartial man and say, 'I was fired because the manager wanted me to work 80 hours a week.' Maybe the manager wanted him to do something else."

He said, "We do no wrong; we do no wrong."

Mr. CURTISS. Where was that contract?

Mr. WOLCHOK. This was offered lately in Albany, N. Y., when we had negotiations with the company.

Does this contract protect the employees against discrimination in promotions? No. Does it provide for the impartial settlement of grievances? No. The section on grievances provides that grievances may be presented through an employee personally or through the union. The union is simply a post-office box through which a worker may send his grievances.

I want to explain that at this point. In our recent negotiations, when we discussed the question of grievances, they said that the only thing that they would do is meet with us. That means after we reach some understanding; and that is all, that is the end of it. Whatever the manager decides, then we go up the further steps, as I have told you before.

Just the other day, at a War Labor Board proceeding, a representative of Montgomery Ward explained what the company meant by collective bargaining and grievance procedure. He was asked whether, since the new election in Chicago, the company was ready to bargain collectively. "Sure," he said. "We offered to set up the old grievance procedure of the expired contract—everything but the last step."

"And what was the last step?" he was asked.

The last step, it turned out, was the settlement of disagreements through an impartial arbitrator.

"How can grievance procedure be satisfactory without this last step?" the Montgomery Ward man was asked.

"Well," he said, "in case of dispute, we have President Ryan of Montgomery Ward settle the matter."

"Is he impartial?" "Well," said the Montgomery Ward man, "the union acts on the theory that there is a conflict of interest between the workers and the management. We believe that the interests of the workers and the management are identical."

Now, I don't know what it is, maybe you can explain that.

In other words, Sewell Avery's idea is that when he and I have a dispute he settles it because there is no conflict of interest. He doesn't say that an impartial arbitrator should settle it, he doesn't say that I should settle it—he says that he should settle it.

The thing would be funny if it weren't so tragic. Mr. Avery simply doesn't want to budge a step unless he is compelled to do so by force. As a law-abiding citizen and as head of a law-abiding union, who believes in obeying both the spirit and the letter of the law, I think this attitude is terrible in time of peace. It is a tragic scandal in time of war. In time of peace, when an employer shuffles his feet and uses the law's delays to sabotage collective bargaining, the union is free to use the power of the strike weapon to bring him to terms. In time of war we want to put aside the strike weapon, we put aside the right to bargain for wages as high as the traffic will bear—we put all that aside on the assurance that there will be quick and impartial machinery for the settlement of labor disputes. Then we find that Mr. Avery objects. He wants to litigate. He wants to fight in the courts until kingdom come. He refuses to recognize that the Government of the United States—his Government and my Government and your Government—has a war on its hands, and that all of us want to get on with the war and want to help the Government in every way possible. He wants to carry on litigation as usual; he wants to carry on obstruction as usual, even if it means paralyzing the activities of Government, even if it means destroying the structure of industrial peace and leads to the abandonment of labor's no-strike pledge and to the collapse of economic stabilization. Yes, though the heavens may fall, Sewell Avery must have his way.

The series of events which began in Chicago last November are a perfect illustration of Sewell Avery's rule-or-ruin, I-am-above-the-Government tactics. The collective bargaining "contract," which he had signed after twice being ordered to do so by the President, was due to expire on December 8, 1943. Some time in November we were informed that according to the company the union no longer represented a majority of the employees in the retail store and in the mail-order house. We were also told that the company would recognize the union only in the Schwinn warehouse, the administration maintenance and the central printing and photographic department and display factory.

This maneuver of the company was based on deliberate falsehood and was the first step in an unscrupulous campaign to destroy the union. As long as the contract was in operation, the voluntary check-off dues handled by the company, plus the dues that were being turned over individually to the union, proved conclusively that we had a decisive majority in all units. Yet the company claimed that we represented only 20 percent of the employees. The company sought to raise this fictitious representation issue. It raised the issue, not because it was in doubt as to facts, not because it was ready to bargain with the union if it was once more demonstrated that the union represented a majority, but simply because it hoped that under

the conditions of terror which would follow the expiration of the contract and under the gerrymandering of bargaining units which it demanded, the union would be unable to establish that it continued to represent a majority of the employees. Yet all the time the company had proof of the union's majority at the time they raised the representation question.

Now, Mr. Chairman, I would like to show you something to prove that. I have here a photostatic copy of the last dues check-off that the company sent us for the month of December. The company, in its own figures, said the following: That the unit that we represent has about 4,700 workers—that is correct, I think, it is in the record—and therefore, 20 percent would be what? About 900 and something.

I have a check here for \$2,048, and on top of the check it says as follows:

Union dues deducted on December 1, 1943,—2,225; Dues payable Congress of Industrial Organizations Local 20, \$2,048.

Here, Mr. Chairman, is the check, if you don't mind showing it to the members. [Check handed to the chairman.]

The CHAIRMAN. All right, you may proceed, Mr. Wolchok.

Mr. WOLCHOK. Mr. Chairman, this proves conclusively that the company was lying yesterday.

Gentlemen, I am not guessing as to Mr. Avery's motives—

Mr. DEWEY (interposing). I think it might be well to put in there—you mentioned 4,700 employees, and 2,000. What is the relationship, is it a dollar a month?

Mr. WOLCHOK. A dollar a month, sir.

By the way, it is the lowest dues. I want at this point, Congressman Dewey, to say that hundreds of men are paying dues without a check-off, because many of them didn't want to have their dues checked off because they didn't want the company to know that they are union men, so they came to the union office and paid dues—there are hundreds of those.

Now, of course, I want to mention this check to show that the company's contention, not only before the War Labor Board, but coming before you and saying we didn't have a majority—I remember one of you asking Barr the question, "Can you prove that the union only represented 20 percent?" He said, "Sure," and he started fumbling with his papers like that [indicating].

I was saying to myself all the time, "Why are you lying?" because we had their own check.

Mr. CURTIS. May I ask a question about this check right here?

The CHAIRMAN. Yes.

Mr. CURTIS. This covers the employees at what places in Ward's properties in Chicago?

Mr. WOLCHOK. This covers the Schwinn warehouse, the retail store, the mail-order house, and the other four units that I mentioned here, the photographic unit, the display factory, and the rest of them.

Mr. CURTIS. All seven of them?

Mr. WOLCHOK. All seven units.

Mr. CURTIS. Will you supply for the record a break-down of how much of that came from each?

Mr. WOLCHOK. I think, Mr. Curtis, the company can do it much better, and I will tell you why: We haven't jurisdictional boundaries.

on our union men. They have jurisdictional boundaries in their factory.

Mr. CURTIS. The reason I raised the question is that they contended that they didn't dispute your majority in five of these units.

Mr. WOLCHOK. I would like to answer this question if the chairman will allow me. The election will prove, if you have read the election returns, that the four units, 128 ballots were cast in those four units, that is all we represent, about 128 to 150 people. We took 100 for the union and 28 no votes, in these four units. Of course, we represented them. But this check also proves that we represented the mail-order house, too; that we represented the store, too; that we represented the Schwinn warehouse, too.

Let me prove something else, Congressman Curtis. If you deduct the store separate, the Schwinn warehouse separate, we still have a majority in the mail-order house. If you take off each and every member according to the election returns, we still had a majority, in spite of what they carried on; and I wish I had the time to tell you what they carried on in order to be sure we were going to lose. By the way, they thought that we were going to lose.

My adviser tells me that if you deduct the Schwinn warehouse and the mail-order house, we have a majority in the store, too. But that is his responsibility. Altogether, I think we have demonstrated that there is a good majority.

The CHAIRMAN. Proceed.

Mr. WOLCHOK. Gentlemen, I am not guessing as to Mr. Avery's motives. They were demonstrated after the union victory in the election of May 9. Mr. Avery's first words to the press—and they were spoken in the presence of the N. L. R. B. official—were, "The election does not mean a thing." In other words, he was admitting that he had hoped to beat the union through the election maneuver and that having failed in that campaign he was going to continue the fight by every other means in his power, and by God, he is doing it.

That was the tactic Sewell Avery attempted, and to a large extent carried out, against the union. When I speak of terror, I mean just that. The moment the old contract expired, Sewell Avery proceeded to cancel all the protections that the employees had enjoyed. Not only was the voluntary check-off canceled, but workers were fired, were spied upon and were intimidated by their supervisors. You may say that the union had the protection of the Wagner Act and could have filed charges of unfair labor practices. That sounds very simple. But when would we have received satisfaction on these unfair labor practices? In the Kansas City case, after accumulating legal proof—and plenty of unfair labor practices take place without the union being able to accumulate 100 percent legal proof—it took us 5 years to adjudicate our charges of unfair labor practices. The charges were filed in 1937. The company did not agree to comply until 1942—some justice! This time if we had filed our charges in 1944, and if we had been lucky, we would have settled the issues in 1949. That would have suited Mr. Avery's purposes very nicely. The union could have been long dead and buried by the time we got a conviction in unfair labor practices.

What the union therefore did, after the contract expired, was to go before the War Labor Board and put the whole matter up to them. The Board voted that in view of our unblemished no-strike record,

the expired contract should be extended for 30 days, during which time the union and the management could agree on how the employee-representation question could be settled by the N. L. R. B. or failing that, the union should petition the N. L. R. B. for a determination of that question.

Let me tell you something on this point, gentlemen of the Congress. We did not have to go to an election, nobody could have made us go to an election, especially in the face of this check from the company proving that we have a majority. Therefore, we said to the N. L. R. B. the following: "Please recertify us on the record; but in case you don't agree with us, then we will go to an election."

Now, the question was raised yesterday, and a lot of stress was put on this—"When did the union go to an election?"

The election was ordered within 30 days, and the union went to an election in 30 days. If the War Labor Board had said 3 days, we would have had the election in 3 days. They jammed us in, but we took it, because I think we are good citizens.

And something else, let me tell you, one of you—I don't remember who it was, whether Congressman Elston or Congressman Dewey—was trying to figure out how long it takes an N. L. R. B. election. Let me tell you how long it takes. I wish it was so that an election should take 7 days or 30 days, we would be the happiest men in the labor movement. It takes months and months and months. In this case, in our first case with Montgomery Ward, it took 7 months before we got an election. It takes years before you get an election. In this case, when they wanted to put on speed; they jammed us in like logs in order to push through the election; they were in a hurry. What was the result? Somebody thought that we were going to lose. The vote proves that the men want to have a union. We went to an election in 7 days. We called up the Chairman of the N. L. R. B. and said to him, "Mr. Chairman, give us another couple of days. We will not be able to even clean up the records. You are pushing us into the ground. In 7 days you are ordering us an election, and usually it takes 7 months."

You know what he said? He said, "Seven days and seven months equalizes itself." That was the answer.

The War Labor Board also ordered that the contract should be extended beyond 30 days if the union shall have petitioned the N. L. R. B.—that is to say, the contract should be extended until the employee representation question was finally cleared up.

The union believes that the War Labor Board made a mistake in bringing up the representation question at all. But I suppose the Board wanted to lean over backward and remove Avery's excuse of not wanting to bargain with the union because he stated it did not represent a majority. We obeyed the order of the Board and filed a petition with the N. L. R. B.

But Sewell Avery did not obey his part of the W. L. B. order. He did not extend the contract nor restore any of the conditions necessary to a fair election. The W. L. B. took charge again and held a hearing on March 29. On April 5 it ordered Sewell Avery again to extend the contract, and at the same time relieved us of the obligation of proceeding with the question of representation until the contract was extended and the status quo restored.

Again, Mr. Avery refused. He was proceeding happily with his union-busting tactics and treated the War Labor Board orders like an obsolete Montgomery Ward catalog. [Laughter.] On April 12, the union, in complete desperation, went out on strike. And if you want me to, I can explain right now how it happened, but I shall do it later.

I have no apologies to make for that strike. If ever a strike was justified, it was that one. The fact is that this is one strike where the War Labor Board did not order the men to go back, they had a belly-ful. The Board referred the Montgomery Ward case to the President for action. The President ordered the workers to go back, and after the workers obeyed his order, he ordered the seizure of the Montgomery Ward plant in order to enforce the War Labor Board directive.

At this point I would like to say the following: I received the President's telegram on Sunday, and on Sunday night I had the answer to the President of the United States. I told him, "I am going to ask the Chicago office to convene a meeting immediately and tell the workers that not only is that the order of the President to go back to work, but it is also my order that they should all go back to work."

Questions were asked on that floor: "What are we going to get?"

We said to them, "The President of the United States and the president of the international"—and I couldn't get the president of the local, but it was the vice president—"have ordered you to go back to work, no matter what will happen."

And, like one, every one of them went back to their jobs.

Gentlemen, you know that following the seizure of the plant, an election was rushed through, and the union won the election. That is all that the union has obtained—an election, but no temporary contract, nor any contract. But it was not necessary to go through the plant seizure merely to prove that the union represented a majority of the workers. The union knew that all along. Sewell Avery knew that all along. And what difference does it make now that it has been demonstrated beyond a shadow of a doubt that the union has a majority?

Do the employees now have a temporary or permanent contract? Are they now protected against unjust dismissal? Do they have the benefit of impartial settlement of grievances? They do not.

The union has obeyed the law, and all that it has received out of it is a shiny new certificate from the N. L. R. B. that we are the collective bargaining agent for the workers in Montgomery Ward. Yes; we are the bargaining agent, but without the power to do any collective bargaining. In the meantime, Sewell Avery has defied the law, and he has so far won his main point—not to bargain collectively. The War Labor Board order to extend the contract has not been enforced. Sewell Avery's trumped-up excuse that the union does not represent a majority has been removed, but he still has not been compelled to bargain collectively.

At this point I want to tell you gentlemen: The War Labor Board yesterday extended the contract again, or has ordered the extension of the contract. What do you expect the union to do right now? What do you expect the union to do? Our workers would like to have an answer to that.

We went back to work, the President ordered us back to work. We held an election, we didn't have to hold an election. We went through a strike, an unnecessary waste of time.

Now, the War Labor Board held a hearing, a compliance hearing, and the War Labor Board ordered the contract extended again. Who, is going to police this contract?

By the way, if the President of the United States had not sent us back to work, we would have had a contract with Mr. Avery, he wouldn't have been so cocky over here yesterday, I can tell you that much. The loss in business he reported resulted from the strike.

When the Government seized the plant, not only did it do nothing to enforce the W. L. B. directive for restoration of the provisions of the contract, but on top of that it did nothing to stop the company from continuing unfair labor practices under the very nose of the Government's occupancy. The company intensified its reign of terror during the period the Government was nominally in control.

Twenty-two workers lost their jobs while an American flag was flying over Montgomery Ward's and the workers were supposedly employees of Uncle Sam.

Just think of the bitter irony of the workers' position. The Government takes over the plant, flies the American flag, and announces that the plant is under its supervision. It announces that no dismissals shall take place without the consent of the operating manager for the Government. The Government reviews a number of cases of dismissals since the seizure. After a thorough hearing it proceeds to reinstate six men.

I want to say at this point that again the company did not tell the truth, because Mr. Goodloe did reinstate the six men. Mr. Goodloe sent them back to work, and management threw them out.

The reinstated men are ordered to their respective jobs. When they report to their jobs, the supervisors inform them in harsh language that they are fired and will stay fired, Government supervision or no Government supervision. Thinking there might be some mistake, they go back to the Government manager, Mr. John Goodloe. Mr. Goodloe assured them that they are on the pay roll of Montgomery Ward whether their supervisors let them work or not. When the Government, on May 9, relinquished the plant to the company I asked Mr. Goodloe what would happen to the people whom he reinstated. His answer was, "I shall report this incident to Washington. I am awaiting further orders."

I have no doubt that he has reported this incident to Washington. I have no doubt that Mr. Jesse Jones is aware of everything that took place during the period of Government occupancy. But has Washington taken action? Have these workers been restored to the pay roll? No.

Gentlemen, you can appreciate my difficulties in trying to justify the ways of our Government to my people. The workers are contending that Mr. Avery is stronger and bigger than the Government of the United States. Obviously, they are correct so far. Sewell Avery has defied the Government of the United States and has gotten away with it so far.

I like to direct this question to you, and I hope it will not prove too embarrassing: Are the rights of property above the rights of men? Sewell Avery is but one man against tens of thousands of men who slave for him, who are looking for a union, who seek the protection of a union to better their conditions. Are we going to admit that the weight of one man and his properties weighs heavier than the rights

of tens of thousands of human beings? That's my question to you gentlemen.

It seems to me that too many people were unduly alarmed and excited when the papers published the picture of Sewell Avery being gently carried out by two soldiers—and very gently, don't forget. They abandoned the use of their reason and surrendered themselves to emotion. Even some members of the Congress—the Representatives and the Senators—who have the sacred responsibility of making laws for the people, became terribly excited over the idea of Mr. Avery being carried out by two soldiers. Hasn't Congress an obligation to the tens of thousands of people that work for Montgomery Ward? If Congress thinks that it has to rectify an injustice to one property holder, haven't the tens of thousands of workers a right to demand the same thing from Congress—the right to have their injustices rectified?

Mr. ELSTON. May I ask a question right there?

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. I suppose you are referring to some speeches that some Members of Congress made on the floor?

Mr. WOLCHOK. And published statements, public statements.

Mr. ELSTON. At the time Mr. Avery was carried out from the plant?

Mr. WOLCHOK. And public statements; yes.

Mr. ELSTON. Don't you know that for every statement made in that direction there was one made the other way? As a matter of fact the gentleman seated next to you was passing out copies of a speech made by one Member of Congress—he passed them all over this room yesterday—against Mr. Avery.

Mr. WOLCHOK. That is right. I don't say all Congressmen, please don't misunderstand me.

Mr. ELSTON. Well, you didn't refer to the other group in your statement. If you want to be fair, refer to both of them.

Mr. WOLCHOK. If I omitted that I apologize for that because I didn't mean the entire Congress. We have some preferences.

The CHAIRMAN. I didn't understand that last statement—you have some what?

Mr. WOLCHOK. Preferences, I said.

Mr. CURTIS. Do you refer those preferences to the Political Action Committee?

The CHAIRMAN. Let's not get into the Political Action Committee.

Mr. WOLCHOK. I will accept the chairman's judgment as to that. (Off-the-record statement.)

The CHAIRMAN. Go ahead, Mr. Wolchok.

Mr. WOLCHOK. Yesterday Mr. Avery testified and pleaded. For what? For warehouses, for merchandise, for dead storage, for dollars. Today I am testifying and pleading for correction of injustices, for the maintenance of human rights, and for a bigger piece of bread to the lowly and humble. I speak for the tens of thousands of workers who are working in a dozen Montgomery Ward plants and stores. I speak also for the men and women who have left Montgomery Ward to join the armed forces and fight our common enemy, and who expect to return and find employment. Unlike Mr. Avery, I speak for the rights of living men and women and not for the rights of dead property.

And I want to make the following remark to you Congressmen, that I know what it means to come back after a war and look for a job. I served in the United States Army during the First World War, and I

know what it means. And it is up to the union to protect those men who come back, because industry, it seems to me right now, especially Mr. Avery, is not going to do anything for them.

I hope that Congress does not agree with Mr. Avery. I hope and pray that Congress agrees with the great majority of working people that the President had a right to seize properties such as Montgomery Ward's in order to protect the interests of 15½ million workers who in a total war are also engaged in work that contributes to the war effort though they do not actually produce guns and tanks and the engines of war. I hope that Mr. Avery complies with the War Labor Board directives and the President's orders, and that it will not be necessary to seize the plant once more.

But should Mr. Avery continue his defiance, there will be no other course open to the President by which he could protect the rights of our people and the interests of the war effort, except to seize the plant again. If that should happen I ask you either to uphold the President or to notify the workers that they are no longer protected and that they must rely on their own strength to get justice for themselves.

I want to explain that, gentlemen. When I speak of 15½ million men I speak about those the same as in any industry, transportation, food, service. I speak right now and, by God, I tell you the truth, that if that strike had lasted another 10 days you would have had Chicago tied up in knots.

Now we don't want to repeat it again, we don't want to strike, that is no picnic. We always try to work. My motto is not to strike. That is the last resort. We do everything we can to avoid striking. But over here, when they try to destroy the rights, they try to destroy a union, they come to this committee and Mr. Avery says he will be delighted when the War Labor Board will be destroyed—what comes after that? Chaos, strikes all over the country. That is what he wants. We are trying to explain to you gentlemen that if Mr. Avery does not accept the directives of the War Labor Board, the house must be seized. But this time it shouldn't be relinquished just because somebody in Congress gets excited.

Our workers are patient. Our workers are willing to wait while the wheels of justice grind slowly through the machinery of the War Labor Board, the National Labor Relations Board, the Conciliation Service, the O. E. S., the Budget Bureau, and finally the White House. Our workers know that strikes in the present situation are like a contagious disease. They spread. Our workers do not want to be responsible for the chaos in war-production plants that the spread of strikes may cause. That is why they pray to you to uphold the action of the President and sustain him in his efforts to avert strikes and strife throughout the country. We have a war to win and a job to do. Let's get on with the war and do the job in spite of Sewell Avery and his pretensions to be above the Government, and above the people's war.

The CHAIRMAN. The committee will take a recess until 2:30 o'clock.

(Whereupon, at 1:15 p. m., the committee recessed until 2:30 p. m., of the same day).

AFTERNOON SESSION

(The hearing was resumed at 2:30 p. m.)

The CHAIRMAN. The meeting will come to order.

Mr. WOLCHOK. I would like to make an additional statement.

Yesterday, Mr. Ball said at one point, "The policy of Montgomery Ward is to obey the law." He later said, "We will obey many laws with which we are not personally in sympathy." In regard to adopting maintenance of membership, Mr. Ball said approximately the following:

Ward's will be happy to comply—that is to insert a maintenance of membership clause in the contract with the union—when that requirement is the law of the land.

The record regarding Montgomery Ward's compliance with the law is as follows:

1. N. L. R. B.—Four cases involving noncompliance with the Wagner Act have been enforced by the circuit court of appeals.

2. There have been a total of 98 different cases involving this company before the National Labor Relations Board.

3. Mr. Ball yesterday stated before this committee, "We have had four disputes before the War Labor Board." Twenty-two serious dispute cases have been certified by the Conciliation Service to the National War Labor Board. Five of these cases have been brought into the Federal courts by injunction and other proceedings, as Mr. Ball stated here yesterday. Rehearing of a motion to dismiss those injunction proceedings has been set before Judge Goldsborough in the District on June 16.

4. In addition: There have been 213 wage cases involving Montgomery Ward involving every section of the country. Montgomery Ward Co. has been involved before the Federal courts of this land and been found guilty of complete violation of the Office of Price Administration law. One case alone involved 434 items in the fall and winter catalogs of 1942 and 1943, and I think this catalog is already before this committee.

A second O. P. A. case resulted in decision from the bench by Judge Barnes relating to the control of the price of cloth. In his decision, the Judge said, "The court is satisfied that the defendant has violated regulation 330," and he is further satisfied "that the defendant made no attempt to comply with that regulation." He also said that—

the defendant did not deny that it had done what the Government charged it had done but that it did deny that the Government could prove that Montgomery Ward had done what the plaintiff charged, and the court has not changed its mind about the attitude of the defendant to this [very] moment.

The attitude of the defendant has been, generally speaking, not that it did not do what it is charged to have done, but that the plaintiff has not proved and cannot prove that it did do those things. Basing the conclusions the court is about to express upon the evidence produced here in open court, and what has been said and done in the case, the court is satisfied that the defendant has not made any attempt to comply with regulation 330.

Compliance with the law, this company has been found in violation of practically every statute the Federal Government has passed. In 1938 when many complaints came in that this company was in violation of the then recently passed Fair Labor Standards Act, the Government under the law as passed by Congress attempted to investigate these complaints. Montgomery Ward refused to permit

the Government to look at its books until forced to do so 2 years later by the Supreme Court. The company did not contend then that the Government was making the violations moot. The company's action did that itself. Did the company comply with the law in regard to its own merchandise? Hardly. Defiance of the law required the Federal Trade Commission time and again to issue orders to cease and desist against further violation of congressional mandate requiring truthful and accurate labeling of their goods and products.

In Montgomery Ward's compliance with the law in the case decided by the Ninth Circuit Court of Appeals, *Hornin v. Montgomery*, here is what the court—in the framing of an innocent employee for purposes of setting a disciplinary example within the store—said:

Stark (the manager) by threats forced Kasmareck (the thief) to give false testimony which, had it been unrepudiated, would have been sufficient to convict Hornin. This Stark did with a wantonness and disregard of the rights of others which plainly indicates that the want of probable cause was wholly unimportant to him. He apparently felt the need of an example for disciplinary purposes at the store, and the means by which he obtained his victim mattered not at all * * *.

And there is also evidence that the defendant company's principal or main office knew of Stark's (the manager's) action with respect to the institution and maintenance of the criminal proceedings almost from the outset and never made any objection thereto.

Judgment for employee sustained.

Is that compliance with the law?

Many States have adopted workmen's compensation to protect its employees from the effects of injury during their employment. Montgomery Ward has consistently fought the efforts of injured workers from securing the benefits to which they are entitled under these various State laws. Here are the facts in two cases:

Montgomery Ward & Co. v. Voight (69 F (2d) 457; C. C. A. 7th Mar. 1934): "Negligent failure in violation of Safety Appliance Act of Indiana to provide sufficient gates to protect openings to elevator shafts at Ward large store then recently built at Michigan City, Ind. Judgment for truck driver who fell down elevator shaft—sustained. Montgomery Ward claimed it was not responsible and truck driver delivering goods took risk of its unsafe elevators."

The next case is:

Montgomery Ward & Co. v. Lindsey (104 F (2d) 882; C. C. A. 5 June 28, 1939): "Here Montgomery Ward had been working its employees overtime for many days in remodeling and rearranging store at Jackson, Miss. The floor was littered with wrappings and trash making the flooring unsafe. The employee was required by supervisor over protest to pick up and carry heavy stove with only one helper having worked from early morning until 11 at night. When asked for more help, was threatened with discharge. Got hernia when helper slipped and threw whole weight on him. Judgment for employee sustained. Montgomery Ward claimed that having moved the stove 10 or 12 times without injury (under threat of discharge) he then took all risks."

I could continue with many patent suits, trade-mark infringements, on through the long list of statutes that Congress in its wisdom has found necessary to pass for the protection of the American people. But this mail-order Napoleon has set himself above the law. His agent says we will obey many laws with which we are not personally in sympathy. The record belies that statement.

Mr. Avery's record not only in Montgomery Ward but in connection with all the companies in which he is the dominating factor duplicates the practices followed in the management of Montgomery Ward.

Need I mention any more than the violation of the antitrust statute by the United States Gypsum Corporation which is dominated by Sewell L. Avery? This company, these men who appeared here yesterday who dominate its policies, in my opinion, should be properly labeled for what they are—outlaws who come to the courts only when they want to use the delay provided for them by the necessary legal procedures which have been established by decent, honest American citizens.

These outlaws used the delays provided by court procedure in a sort of guerilla warfare against the agencies established by Congress for the protection of the American people.

They also use the courts in an effort to carry on a war of nerves against anyone or group who points up the sad and dismal record which I have stated here.

That is all, Mr. Chairman.

The CHAIRMAN. Mr. Byrne?

Mr. BYRNE. Mr. Wolchok, you say that you are a veteran of World War No. 1?

Mr. WOLCHOK. Yes, sir.

Mr. BYRNE. Have you lived in Chicago all of that time; that is, since the last war?

Mr. WOLCHOK. No, sir. I have lived all my life in New York, but I have been many times in Chicago, and spent many weeks and months there.

Mr. BYRNE. How long have you been there now as head of this particular organization, or do you have your main office there?

Mr. WOLCHOK. Our main office is in the city of New York. The regional office is in Chicago.

Mr. BYRNE. You are the head of this particular union, but your headquarters are in New York City, and not in Chicago?

Mr. WOLCHOK. I am the president of the international with over 200 locals, located in 38 States, and Local 20 is one of the locals that belongs to our international located in Chicago.

Mr. BYRNE. You have, you say, been dealing with the problem of employment by members of your union in Montgomery Ward's plant in Chicago and other places ever since you got your charter back in 1937?

Mr. WOLCHOK. Yes, sir; that is right.

Mr. BYRNE. Have you in that time ever found any medium by which there could be an arrangement of account between your organization and the management of Montgomery Ward, no matter who that management might be?

Mr. WOLCHOK. No, sir; and I have made not only one attempt, but dozens of attempts. Let me illustrate to you something very important.

In Barre, Vt., they have a small store with, I think, something like about 15 or 18 people involved in the whole store. An election took place over there, and after the election took place, and after they were certified, we asked the company why they wouldn't agree to some kind of an agreement. After the first meeting with the company, they presented us with their usual scrap of paper, a so-called contract, and they have refused to budge.

I spoke to the management, and I said, "There is a small store in Barre, Vt., with 18 people involved. We want an election in there."

The company compared the signatures on the cards with those on their books, and it was all settled. "Why can't we settle this dispute?" They said, "This is our policy and we don't move an inch from it."

That is what we have to put up with all over.

Mr. BYRNE. Now, give me a statement regarding the policy of the company in Albany, N. Y., the congressional district that I represent. Will you give me the story of your negotiations with Montgomery Ward at that particular plant?

Mr. WOLCHOK. About 3 months ago or so, we went to a National Labor Relations Board election. We wanted to represent the workers in the store and the warehouse—they have both over there. They have a large warehouse and a store employing several thousand people. We won the election by 70 or 80 percent, I don't remember accurately what it was. We waited for the certification. We were certified, and finally, I instructed our representative over there to write a letter to the company and tell them that we are ready to sit down and negotiate a contract.

The company sent down one of their attorneys, Mr. Norton, an associate counsel of Montgomery Ward. He met with the committee and repeated word for word the same story, the same answer, the same as in Barre, Vt., the same as in Chicago, the same as in New York City, the same as everywhere else.

Arbitration? No. Seniority rights? No. Maintenance of membership? They settled it—like that. "You know our stand about maintenance of membership. Forget about it. Don't even talk to us about it." That is where it ended.

Mr. BYRNE. Pardon me. I would like to ask at this point—

Mr. WOLCHOK. Excuse me. Let me finish.

Now, then, we have applied to the Conciliation Department. The Conciliation Department got into that to try to patch up the differences, but it couldn't do it, and therefore certified this dispute to the War Labor Board. Now, it is up to the War Labor Board to set up a panel to hear the dispute, to hear the case.

Of course, what will come out of it I cannot tell, but if their position should be the same later as it is now, it will be the same result.

Mr. BYRNE. And you mean by that what—the same result?

Mr. WOLCHOK. I mean by that that they will not negotiate in good faith, and that they will not sign the contract, and therefore we will have the same result.

I think Albany is pretty well congested, too. The question is whether we shall go out on strike and disturb the rest of the working population over there, because who works in Montgomery Ward today? The girl whose father may be working in a mine or mill or factory, and if these people are going to decide, naturally sides will be taken, and these things spread like wildfire.

What are we going to do over there? We don't want to be responsible for the creation of other strikes.

Mr. BYRNE. In other words, you tell me that the same situation prevails in the Albany plant or divisional headquarters of Montgomery Ward that exists in the plant in Chicago?

Mr. WOLCHOK. That is correct.

Mr. BYRNE. Exactly the same situation?

Mr. WOLCHOK. Exactly the same situation, and something else, Congressman. When the strike broke out in Chicago, the workers from Albany wired my office and said that they were ready and willing to go out on strike. I said to them, "Don't do it. We don't want this strike to spread. Please stay."

Every night they met and every night they called us to ask us whether they would be allowed to go out on strike in support of the Montgomery Ward workers in Chicago, and I had to hold them back with all my might.

In one instance, we couldn't hold them back. That was in Kansas City. They went out on strike and we went in and sent them back to work. We said, "You go back to work and stay there. We have enough trouble in Chicago."

Then, a couple of days later they went out again and we had to put them in again in order not to spread the strike into Kansas.

Mr. BYRNE. You haven't any figures there as to the number of people involved in the Albany plant?

Mr. WOLCHOK. I think it involves around 1,800, but I will be glad to send you the true account.

Mr. BYRNE. In round numbers—I don't want the exact number. I would like to know, generally speaking.

Mr. WOLCHOK. It is between 1,500 and 1,800 people.

Mr. BYRNE. Mr. Wolchok, your representation of your organization has brought you in contact—and I am only going to ask you for a general answer—with the management of Montgomery Ward how many times since the organization of your union? I am speaking of labor disputes. Just a general statement.

Mr. WOLCHOK. My first experience I have cited to you came when our representatives were sent when the strike broke out in Kansas City in 1937.

After that, I have met so-called formally, Mr. Barr and Mr. Stewart Ball, when we won the election in the Schwinn warehouse in Chicago.

At that time, we went into very lengthy conversation with the company. We discussed every angle, labor, industry, the make-up of the union, what kind of union there should be, and we still couldn't conceive that they wouldn't reach an agreement when their employees were so willing to belong to the union, and they had all the proof they wanted legally and otherwise.

After having conferences with them, that lasted 2 or 3 days, constantly from morning to evening, together with a committee of the workers, they came out and we decided that we couldn't do anything at all with that company; that they would never sign a contract.

I asked to see Mr. Avery.

Mr. Barr told me, "Mr. Wolchok, Mr. Avery would like to see you and get acquainted with you." I said, "I would be very happy."

That night I couldn't see him because he couldn't wait and our meeting lasted late in the evening.

The next time I was there I came up to see Mr. Avery. I was with him for about an hour and a half, and the conference broke up. It was fire. The result of that conversation—I can tell you some portion of the conversation—this is the truth—that I discussed with him the general question of a union and so forth, and he was upbraiding at that time the N. L. R. B., the O. P. A., and everything else under the sun, everything that was in Washington.

Finally, when we got through I asked him, "Would you care to know what your workers think about you?" He said, "Yes, Mr. Wolchok; I would be glad to know." I said, "You know, Mr. Avery, your workers think you are a slave driver," and by God, that man hit the ceiling. He jumped up and sat right back and composed himself, and he said, "How do you know?"

I said, "I will tell you what, Mr. Avery. You come with me. Let's go down stairs in the pit, and you ask the workers. The conditions that are here are slave conditions. It is about time," I said, "that you should improve your conditions. You have needed a union for a long time."

Well, let me tell you, after that we didn't last very long, and I bowed out.

Now, of course, we were letting off steam. That is a fact. The workers were letting off their steam. How? They wrote pamphlets. They figured that they had free speech, and so you can write what you want. So we told them the truth.

Some of the people unfortunately pulled out the periods of S. L. Avery, and it became "SL avery," and they said that was our fault. The result is that they are suing us now for a million dollars.

Well, all right, that is up to the courts. I have no quarrel with that, whatever the court will decide.

Now, after that, my relationship with them has been that I met Barr every time we had an election somewhere. In Kansas City I met Barr. My vice president met Barr. In New York I have met Barr or Ball or his representatives. In the courts I have met Barr or Ball. In other words, we are constantly meeting them.

Lloyd Garrison, who was at that time the chairman of the panel that was hearing this case in Chicago, called me in and said, "Don't you think it would be a good idea if you and Mr. Avery could sit down once and for all and settle this dispute?" I said to him, "It is a good idea."

He sent a letter to Mr. Avery and to myself and said, "Gentlemen, get together and settle these problems, these four questions."

At that time I called Mr. Avery, and he said, "I shall gladly see you and we shall discuss the whole thing." I came there at 10 o'clock on the dot. I got through with him at 7:20 in the evening. He took me to my hotel from his place, and out of that conference, do you know what came down? A zero, big, like that [indicating]—nothing. We couldn't agree.

We couldn't agree even on the smallest clause in the contract. If this is called labor relations, it is only in his own dictionary, because labor relations or negotiations mean that the two of them get together and settle.

Well, that was until I saw him over here. That was all that I have seen him.

Mr. BYRNE. Now, Mr. Wolchok, has your organization got a single contract with Montgomery Ward any place?

Mr. WOLCHOK. Nowhere.

Mr. BYRNE. You have unions organized in how many of their plants? How many plants have you got locals organized in and operating in?

Mr. WOLCHOK. In Montgomery Ward?

Mr. BYRNE. Yes, they said something about 600 plants, or something of that kind.

Mr. WOLCHOK. Let me tell you how it works. We went after the big plants, the mail-order houses in Chicago, which is the main one; Albany; Jamaica, N. Y.; and the retail stores in Kansas City, Mo., which makes four. Then Denver, Colo., is five. In Barre, Vt., is six, and in Detroit, Mich., in about five or six stores, comprising 2,000 to 2,500, is 7. One in Plainfield, N. J., makes 8, and there is one other.

Mr. BYRNE. You haven't got any in Portland, Oreg.?

Mr. WOLCHOK. In Portland, Oreg., there was a teamsters' fight there that lasted for 7 months, as they told you yesterday, and they closed out the plant.

Mr. BYRNE. But you haven't any organized local there?

Mr. WOLCHOK. No; we haven't got them organized.

Mr. BYRNE. Are you making legitimate attempts to organize in other plants of theirs?

Mr. WOLCHOK. Of course.

Mr. BYRNE. And you are doing that regularly and constantly?

Mr. WOLCHOK. We are doing that regularly and constantly, and the American labor movement, both the A. F. of L. and C. I. O. are going to help in that, and they are going to give money and manpower to organize Montgomery Ward.

I have with me here two photostatic checks of the U. A. W., the automobile workers, and the United Steel Workers. Each gave \$25,000 apiece in order to help organize Montgomery Ward.

Mr. BYRNE. Now, Mr. Wolchok, relative to the Chicago trouble, were you in the building at any time during these controversies that were going on—and I am speaking now of the main building where Mr. Taylor, representative of the Government, occupied an office?

Mr. WOLCHOK. Not, not during the seizure conversations. I was in the second day after the seizure.

Mr. BYRNE. The second day?

Mr. WOLCHOK. The second or the third. The Government already had control of the house. I came in to see Mr. Taylor. He asked me to come in and see him.

Mr. BYRNE. Did you at that time have any conversations with any of the representatives of Montgomery Ward?

Mr. WOLCHOK. No, sir; I did not; but I had conversations with them later, when we met in the N. L. R. B.

Mr. BYRNE. Will you tell us something about what those conversations were?

Mr. WOLCHOK. When I met in the N. L. R. B., I met Mr. Barr, and I had some very long conferences with him about the whole thing. First he followed the usual form—"You are going to lose the election; why are you aggravating yourself, Sam? You are going to lose the election, anyway. Here you are working for nothing."

I said, "Mr. Barr, if we lose it, I assure you we are not going to make any rumpus about it the way you are making."

Secondly we discussed with them over there the unit question that was so much discussed over here. Mr. Barr gave the following impression, that there were something like 8,000 workers in Montgomery Ward. Let me tell you what happened over there.

First, they have over there people who work 2 or 3 hours a day who are not regulars.

Secondly, they have over there school children who are working, whom we do not take into the union, and who come in there with their books under their arms, bobby socks, little children who work 2 or 3 hours, or whatever it is. I don't know their ages, and I am not interested right now.

We agreed immediately that these children should be excluded from the unit. Then we had an understanding by stipulation. Mr. Barr and our attorney stipulated that anyone who within the last weeks, did not have 20 hours of work should be excluded from the unit. That excluded hundreds of people out of that unit. We agreed, we stipulated, and it was understood.

Now, when he contended yesterday that the N. L. R. B. eliminated that, that is an untruth, because we have stipulated that before the hearing officer and there is a stipulation on file. You can look into it if you have the N. L. R. B. record before you.

Now, something else on that. We have also stipulated that whenever there shall be a misunderstanding on that, that the National Labor Relations man shall be the impartial chairman. He shall be the impartial arbitrator in that to say yes or no.

Finally, after the N. L. R. B. worked in there for 6 days, and 6 nights, they finally came down to the unit that took in 4,700 with all the exclusions, so that it isn't a question that the N. L. R. B. ruled who shall vote and who shall not vote, but that was done by stipulation, with Mr. Barr present.

Mr. BYRNE. Then you have really got what you call a foundation or basis now, at least at that time, for knowing just how many were eligible to vote. Is that right?

Mr. WOLCHOK. That is correct.

Mr. BYRNE. Did you see any notices posted on boards or perhaps bulletins or anything of that kind?

Mr. WOLCHOK. No; but I know this much—I know our people, when Chatfield Taylor issued the first notice, had this experience. Let me tell you my relationship to the whole case.

When the house was taken over by the Government, or shall we call it when it was seized, I went to Mr. Taylor and I said to him, "Mr. Taylor, let's come to some understanding as to what the union is doing, because we are working in there."

After he looked into the directive, he found that the President directed Jesse Jones, the Secretary, to proceed to settle grievances for the union and the rest of it. They decided to put up a notice on this question on the bulletin boards, and they asked our people to point out where the bulletin boards were. Three of our members from Local 20 went with the two soldiers and pointed out the bulletin boards and where the notices should be put up.

Here is an interesting feature of what happened. By the time they came down and posted on the first floor, every notice was torn down, and in some instances a nasty swastika was put up instead, and by God, I think I can swear for the majority of workers over there and maybe for 90 percent of them that they would have not done that. It was probably the company that did that.

Mr. BYRNE. That you don't know. You simply know there was something of that kind there?

Mr. WOLCHOK. That is all.

Mr. BYRNE. Now, can you tell us how many men and women of your organization, your local, are employed, in that warehouse, the Schwinn Warehouse, which you organized first?

Mr. WOLCHOK. About 350 to 400 people, and every one of them, with very few exceptions, are all union men belonging to our union.

Mr. BYRNE. Men?

Mr. WOLCHOK. Men and women.

Mr. BYRNE. That place is practically unanimously organized, so-called?

Mr. WOLCHOK. That is correct, sir.

Mr. BYRNE. Have they got a contract?

Mr. WOLCHOK. No, sir. That is all in one unit—the Schwinn Warehouse and the Chicago unit.

Mr. BYRNE. But they are not a separate unit? That is, they are a part of what you would call the Chicago unit?

Mr. WOLCHOK. That is correct, sir, the Chicago plant.

Mr. BYRNE. But they do not operate, notwithstanding that they are organized, under any contract of agreement?

Mr. WOLCHOK. No, sir.

Mr. BYRNE. I am interested now to find out, personally, at least, about this question of this pay-off, this check that you showed here this morning.

Mr. WOLCHOK. Yes, sir.

Mr. BYRNE. I am a little bit uninformed on that.

Mr. WOLCHOK. You meant check-off?

Mr. BYRNE. Pardon me. I saw the check, and I had that in mind. I want to get the procedure. I want to find out just where that check is not correct. You have 4,700, you say, agreed upon by stipulation.

Mr. WOLCHOK. That is correct.

Mr. BYRNE. And your dues are how much per individual per month?

Mr. WOLCHOK. A dollar.

Mr. BYRNE. One dollar for every individual?

Mr. WOLCHOK. That is correct.

Mr. BYRNE. So that under the law, there should be paid to the union the sum of \$4,700 substantially each month?

Mr. WOLCHOK. No, sir. This is a voluntary check-off. In other words, a member is not, because of the fact that he signs a check-off card one month, obligated to pay dues the next. He can say to us, "I don't want to send in my money," and that is all.

Mr. BYRNE. I see. It is voluntary.

Mr. WOLCHOK. Yes, sir.

Mr. BYRNE. Now, does that check which you indicated here today in the record correctly or incorrectly represent the number of people from whom deductions have been made by Montgomery Ward for that particular month?

Mr. WOLCHOK. That was a correct deduction by Montgomery Ward in the month of December, which is the last month of our contract. Besides that, there are other people who paid directly to the union, and those number several hundred.

Mr. BYRNE. Yes; I understand. Now, let us assume, Mr. Wolchok, that there were 4,700 people working there in December that have what you would call a union status.

Mr. WOLCHOK. No; I couldn't say that, sir. I will tell you why. Their turn-over is tremendous, as has been proven by the company. It is somewhere in the vicinity of 200 percent. Now, during the year we have had 11,000 members. We have signed and re-signed 11,000 people, and out of them, out of the 11,000 people that we have signed and re-signed, because of the large turn-over, there remained approximately 55 percent by the end of the year.

Mr. BYRNE. In other words, out of a total incoming and outgoing representing, say 11,000, at the end of the year there were substantially 4,000 plus in the plant in Chicago that were members of the union.

Mr. WOLCHOK. No; no, some of them did not make sure yet of membership, because if a man or woman comes to work over there they are not steady workers.

Mr. BYRNE. No; they are temporary, I suppose.

Mr. WOLCHOK. And they are not obligated to join.

Mr. BYRNE. They are Christmas employees and all that sort of thing?

Mr. WOLCHOK. Some of them are regular employees, but under our contract they are not under maintenance of membership, so are not obligated to join.

Mr. BYRNE. Let's get back to this check again so I can get clear on that. In what respect do you claim that that check does not represent the proper amount that should have come to the union for dues?

Mr. WOLCHOK. I didn't say that, sir.

Mr. BYRNE. Now, why was the check offered? I want to get this straight in my own mind.

Mr. WOLCHOK. On the subject of the check, it says there are 2,225 employee members of the union supposed to be checked off by the company. The amount of the check is \$2,048, and there is a reason for that difference. Those people not present that week when the check-off of the money was made did not have their dues deducted.

Now, on top of that there are several hundred people who paid their dues into the union. That means that the union had over 50 percent, or a majority in the plant at that time.

The reason I gave you the check is for the following reason: To show the lie when the company maintains that we had at the end of the contract only 18 or 20 percent of the membership.

Mr. BYRNE. Very good. At last I have got that matter straightened out in my mind. In other words, I was in a state of confusion as to what that check represented, as to the contentions that you hold regarding the controversy.

Mr. GOODMAN. It shows most clearly that the company had in their own records proof of the large membership in the union, though they came here yesterday and said that from the check-off records that they had they knew that we only represented 18 percent. They lied here to the committee yesterday.

Mr. BYRNE. That was the purpose of the check—to indicate, of course, they were not telling the truth by a check they issued themselves. Is that correct?

Mr. WOLCHOK. That is correct.

Mr. BYRNE. That is all.

The CHAIRMAN. Mr. Dewey.

Mr. DEWEY. Again I fear I am going to bore the committee, and I hope not bore you and Mr. Levy and Mr. Goodman. I want to impress upon you that out of this hearing there may be some good come, but the purpose is as stated in the resolution that was read this morning.

I would also like to draw your attention to the fairness of this investigation. In your statement you have stated that even Members of Congress, the Representatives and the Senators, who have the sacred responsibility of making laws for the people, became terribly excited over the idea of Mr. Avery being carried out by two soldiers. That is on page 16 in the next to the last paragraph.

I think we were disturbed by that sight. I think that is what really started this whole investigation. It would have made no difference whether it was Mr. Avery, nor would it have made any difference if the matter had been reversed and soldiers were there to disperse your picket line.

The thing was that it was not in our mind and in the minds of the Congress the American way of procedure, and we wanted to find out about it.

Now that this hearing has been held and that we have tried to take all sides, I just wish to call attention to those who have been asked to come. In the first instance, Mr. Davis of the War Labor Board presented his opinion. His opinion was expressed naturally in favor of the position which he took. He was followed, if I recall, by Mr. Reilly, of the National Labor Relations Board, who was a Government official and connected with one of the three directors of the National Labor Relations Board.

He was followed by Mr. Biddle, who had ordered, or apparently his legal advisers through Mr. Taylor who was then representing the Government, the soldiers into the plant. He appeared as a witness naturally in support of his own action.

Then following that we had Mr. Taylor, who served in the capacity of the Government operator under the direction of his superior, the Secretary of Commerce, Mr. Jesse Jones.

Then following him, in criticism of the withdrawal of the post-office authorities, or post-office employees, rather, we had Assistant Postmaster General Cargill.

Then, following him, I think we had Mr. Avery and his assistants, and today we have you and your two associates.

I only mention that to rehearse that I think what could be better? What could be more American than to have this thing brought before us, Members of Congress?

Now, we are not in any way judges. I am tremendously interested in your statement. I was interested in what Mr. Avery had to say yesterday. Of course, they are as far apart as the North Pole and the South Pole. We are not judges of that, nor could we decide the unfairness or the purposes of the management of Montgomery Ward Co. What we can do is, as I said to Mr. Carey, who preceded you, is hear all of these things and then make recommendations to the Congress.

I know that both labor and management should really recognize some advantage from this proceeding here and I think that they are going to. I know all seven of the gentlemen here present on this committee will want to do that very thing. But there are one or

two points that I also would like to bring out that are in your statement.

I am not going to quote directly from your statement, and I won't even bother to look up your remarks.

You remark that the rehiring and placing in industry of our returning soldiers is only going to be a matter of the unions to take care of them. I can assure you, sir, that that is not really correct. We have been working here, all of us, to try and find ways and means to make that replacing of the soldiers a possible job, and the conversion of industry from wartime to peacetime pursuits a possible job to be done expeditiously. We are doing that in the best interests of the whole economy of the country of which labor is such an important part. We don't want to have a period arrive when there will be no jobs, and for that reason we are working, and that can only be done by the assistance of Congress and the laws passed.

That is why I said to Mr. Carey this morning that I hope out of this will come some consideration of the manpower question in this, the human question, as well as the question of purely physical assets such as plants, and so on.

Now, one thing more and then I will be done. Your statement has been, I may say, very interesting in every way.

Mr. WOLCHOK. Thank you, sir.

Mr. DEWEY. I have listened to it with the deepest interest. One thing I would like to ascertain, because there was a direct statement made by either Mr. Barr or Mr. Avery himself in regard to the wages paid. It is on page 2, which states that the facts are that the workers in Montgomery Ward who eke out a poor living on \$20 or \$25 a week wage obeyed all the laws and all the directives and orders of the War Labor Board and the President, and yet have to get justice and equal protection by the laws.

Now, I inquired, and I will not bother to take the time to find which one of the Montgomery Ward officials responded, regarding the adherence of the hold-the-line and Little Steel agreements. They claimed and I think I am correct in the figure, that they were paying 26 percent above the January 1, 1941, wage level on an average. Then I reiterated, "You mean on an average or you mean in one case," and they claimed that they would not be permitted to increase the wages by 10 cents an hour requested by the union even if they wished to do so, because they would be withheld from doing so by the operation of price control.

Now, that is a question I would like to ask in such a way as you would care to answer.

Mr. WOLCHOK. I would like to answer you right now on the wage question.

Gentlemen, I have before me a job classification that the company gave to us, a so-called job classification, and it begins with 45 cents an hour.

Mr. DEWEY. How many hours a day?

Mr. WOLCHOK. Forty hours a week. Forty-five cents. And it ends with a high of about \$1.25. That is the scale.

Now, the majority of the people working in that plant get somewhere in the vicinity of \$25 a week, which would be about 60 cents an hour. I will tell you why.

First, in their large turn-over the new people begin all the time at the bottom, no matter what their classification. Sometimes they fall into other classifications, but they begin from the bottom unless they are skilled mechanics, skilled people whom they have difficulty to get without paying the price—repair men, motor winders, solderers, or something of that sort.

Mr. DEWEY. Are those last three classifications you mention skilled or unskilled?

Mr. WOLCHOK. Skilled people.

Mr. GOODMAN. In the Chicago plant.

Mr. WOLCHOK. Let me tell you what kind of people are getting this kind of wage. We have over here people who are machinists, maintenance operators, pharmacists, refinishers, printers, people that are doing printing work, repairmen, mechanics that wind motors, watchmakers, and so forth. Those skilled people they cannot get and so they are forced to pay 80 cents, 90 cents, or \$1 an hour.

Mr. DEWEY. They pay the regular competitive union wage scale on those classifications?

Mr. WOLCHOK. No, sir.

Mr. DEWEY. I don't see how they can get them otherwise.

Mr. WOLCHOK. On an over-all average, I don't think it goes beyond \$25 a week.

Mr. DEWEY. For how many employees?

Mr. WOLCHOK. For their plant, which is approximately whatever number they have over there.

We have a panel report, and in this panel report I will show you that is correct. This is part 1 of that panel report, which is only dealing with wages. In this report they find that 80 percent, if I am not mistaken, of all the people are getting less than \$25 or \$26 a week. I don't remember the exact figures, but I will soon find them. That is what the panel found.

At that time the panel recommended a 5-cents-an-hour increase on an over-all for everybody. At that time they were below their competitors.

Let me tell you something about competitors. Yesterday in these proceedings they were talking and ranting about their competitor. When the War Labor Board employed two people, one a woman by the name of Miss Jones, and another a fellow by the name of Fisher, they had to make a wage study of another establishment in comparison to Ward's. When their report was brought in, we asked them where they got those figures. The union questioned, "Where did you get those figures?" because we thought it was a little bit under what we wanted.

They said, "We are sorry, Mr. Wolchok, but we cannot tell you where we got the figures, because if we were able to tell you you would have gotten the figures. You must take our word for it that these figures are accurate figures taken out of the books."

When we examined their papers, we knew who it was. I don't care to mention the name, but we know who it was—it was the largest competitor to Montgomery Ward.

Mr. Barr and I were laughing at that time, because we knew where the figures came from. Those figures showed that in spite of what the War Labor Board recommended, the competitor is still higher anywhere from 5 to 10 cents an hour.

Let me tell you something. Even after they gave the 5-cent increase, their competitor was still higher by about 15 percent. Fifteen percent of what? Fifteen percent of the Nation is something; 15 percent of \$100 is something; but 15 percent of 45 cents—I am afraid that doesn't mean too much.

Even then, Mr. Dewey, I want to tell you that I think we can still find something yet under the 15 percent. At least, we still can find a substandard wage under 50 cents an hour. We still can find it over there. But what is the difference? Tell me. If you would agree even on 10 cents an hour, tomorrow they can take this worker and reduce him to 45 cents an hour. What can we do about that?

Mr. DEWEY. Now, Mr. Davis testified that they had never had any War Labor Board dispute on wages.

Mr. WOLCHOK. That is right.

Mr. DEWEY. With Wards.

Mr. WOLCHOK. No; Wards accepted this report. When this case came before the War Labor Board, they divided it into two parts, one the wage question. This was the wage question. When the Board finally ruled that they could give 5 cents an hour, Ward accepted it grudgingly and said, "We will accept that."

Now, since then we have made our demand for 10 cents an hour. We are not ashamed to ask that a girl getting 45 cents an hour get 10 cents an hour more.

They were trying to prove over here yesterday that they are over-paying them. In other words, they are letting out right now their intention not to give us any money. That is another way of putting it. That is how I look at it.

Mr. DEWEY. Of course, I don't know what is in back of their statement, but they made one statement and there was quite a different statement in your statement, and I just wanted to get the two sides in the record. They claim, and I think I am correct, that they were paying as high or higher wages than any of the similar industries for similar work in the area, and that they were 26 percent, I believe, over the January 1, 1941, level, and that they could not make that additional 10-cent payment because that would have put them even higher above the 15 percent increase, and that is what I want to ascertain in view of your statements here.

Mr. WOLCHOK. I will tell you this: This case is coming up right now before the War Labor Board again. We have outlined the process of the so-called negotiations. I will tell you later about that. When we get through with that, I assure you that if the War Labor Board decides that we are entitled to 2 cents, 3 cents, or 10 cents, whatever they decide we shall accept. That lets them worry about that question. If the War Labor Board decides against it, we are not going to strike about it. We are not going to allow our people to get excited about that.

All we can say is as follows: If the money question is troubling them after the War Labor Board makes its decision, it shall be final and binding as far as we are concerned. We might not be satisfied, but maybe we will be satisfied. Maybe the company will be satisfied. But the question of money, if there is anything that the workers are asking that is not coming to them, and the War Labor Board says that we can't get it, we will accept their decision.

We will fight. We will try to prove to the War Labor Board that the workers are entitled to it, that they are underpaid.

It isn't true what Montgomery Ward says, because if it would have been true their turn-over would not have been so big. If it had been true, their workers would sit in their stores. If it had been true, their own manager would not have had to admit that it cost them \$1,000,000 a year in turn-overs, and that they should do something about it.

Mr. DEWEY. This is a little aside from the question, but you apparently had great experience in dealing with this particular type of work—in labor, I mean. Taking into account the normal turn-over around the seasonal period at Christmas—

Mr. WOLCHOK. That is a different story.

Mr. DEWEY. That is one story but is there a large turn-over in this type of business ordinarily as compared with other industries such as one under the craft system or where there are higher skilled laborers? This is pretty unskilled labor, is it not?

Mr. WOLCHOK. Yes, sir. Let me tell you how this thing works: Before Christmas, any house like Montgomery Ward, or like R. H. Macy whose complement is about 10,000 people during the year, during Christmas they employ extra workers and in the case of Macy they employ 30,000 people.

Mr. DEWEY. But in that original 10,000, does their turn-over equal the turn-over in Wards?

Mr. WOLCHOK. This year there was a larger turn-over in Macy's because a tremendous amount of people went into the armed forces, but normally their turn-over is somewhere in the vicinity of about 10 percent, which is a normal turn-over—10 or 15 percent.

Mr. DEWEY. What was it in the past year?

Mr. WOLCHOK. About 10 percent.

Mr. DEWEY. In the past year?

Mr. WOLCHOK. It is 10 percent normally.

Mr. DEWEY. You mean 10 percent is normal or abnormal?

Mr. WOLCHOK. This year was a little higher than last year because a lot of people went into the armed forces. They had a great number of young people who went into the armed forces.

In this company, though, in the report made by the chairman of Montgomery, Ward & Co., Mr. Avery, rendered to the stockholders, the turn-over was stated as 168 percent.

Mr. DEWEY. In what period?

Mr. WOLCHOK. In 1 year.

Mr. DEWEY. What year?

Mr. WOLCHOK. In 1943. In the year of 1943 there was a 168 percent turn-over. That is an awful waste of money, because of retraining people, and of course you can understand that also doesn't do much good to a union in its membership. In the other years their percentage of turn-over has been probably just as high, because we know from other companies that that wouldn't be true if their labor policy was anywhere near half way decent.

Mr. DEWEY. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Clark.

Mr. CLARK. Mr. Chairman, it was necessary for me to attend a meeting of the Rules Committee and I have just now been able to

return. I don't know what has been going on here, but there are two or three questions I would like to ask.

Are you acquainted with the general situation in the Chicago area as to war activities?

Mr. WOLCHOK. Yes, sir.

Mr. CLARK. Could you mention any of the war activities in that section, or just a few of them?

Mr. WOLCHOK. I would be glad to, sir. I am very well acquainted with the Chicago area. I am very well acquainted with what is in Chicago. I have spent many months there.

Now, the first thing which you have in there which I think is very, very important to this Nation is the packing houses that are situated very close to the Montgomery-Ward plant. Next, you have over there a lot of steel mills, airplane factories, and you have over there machine-tool factories.

Chicago, as you probably know, was considered a No. 1 area, a critical area. I am very well acquainted with the fact that there is a great amount of industry going on over there.

Mr. CLARK. Would you characterize it yourself as a critical war area?

Mr. WOLCHOK. Yes, sir; I would.

Mr. CLARK. I mean on account of the war activities located in that area.

Mr. WOLCHOK. That is right, sir. I want to show you Congressmen what the paper says. "Chicago put in labor class 1." In fact, it says after that, "War plants on a 48-hour week." That is a screaming headline in the Chicago paper.

Mr. CLARK. I don't believe all I see in the papers.

Mr. WOLCHOK. That is one thing you could believe, because it is a fact.

Mr. CLARK. Now, you didn't mention transportation and communication. How does the Chicago area rate in that respect?

Mr. WOLCHOK. Very critical. I will tell you why from my own observations. I know Chicago, being the hub of the United States, has motor transportation going from there in all directions, going east, going west, and going south.

I think it is a No. 1 area there as far as transportation goes in Chicago.

Mr. CLARK. Do you know anything about the extent to which labor is organized in the Chicago area?

Mr. WOLCHOK. The extent of what, sir?

Mr. CLARK. The extent to which labor is organized in the Chicago area?

Mr. WOLCHOK. Yes, sir; I think I do know that labor right now has about three-quarters to a million men organized within a 50-mile radius.

Mr. CLARK. Now, I want to take you back over a part of your testimony of this morning, which you need not repeat.

When you were speaking of the fact that while the labor was not entirely satisfied with the War Labor Board or the maintenance-of-membership contracts that at least the leadership was undertaking to abide by those decisions for the duration of the war.

Mr. WOLCHOK. Yes, sir.

Mr. CLARK. And you spoke of the strike that occurred in Chicago, and of the fact that the people went back to work when the President's telegram arrived.

Mr. WOLCHOK. Yes, sir.

Mr. CLARK. Did it or did it not become generally known in that area at that time, or about that time, that Montgomery Ward had declined to comply with the President's request?

Mr. WOLCHOK. I would like to answer you in the following form, Mr. Clark: What happened over there scared us a great deal. We were almost afraid that we would be the cause of a tumultuous and chaotic condition in Chicago. Let me explain what happened.

First, when the company demanded an election from us, everyone, every industrialist, began to ask an election after their contract had expired. That sowed the seeds, and they began to ferment and to be a source of trouble.

Then, when the workers learned that Montgomery Ward & Co. did not want to obey the President's order, they became very much alarmed. There was a sort of insecurity which fell on them, and hundreds of labor leaders came to us and told us, "For God's sake, where will we go from here, because we will not be able to hold our people should they go out on strike, and they want to strike because Mr. Avery does not want to live up to the order of the President of the United States."

This alarmed us because what happened first is that Pullman Standard pulled out and some more threatened to pull out.

When the railroad people refused to go through the picket line, if the strike had lasted another couple of days, you would have had a railroad strike in the entire Chicago-St. Paul area.

We have an affidavit here. I don't know if it is in the record or not, but here is an affidavit from Mr. Christianson saying that if the strike had lasted another 10 days it would have tied up the Chicago and St. Paul areas. Why? Not because there was a question by the workers, but there was a fear that somebody was going to set the pattern of not obeying the President's order.

Mr. CLARK. Now, did you have evidence of any such condition as that before it became known that Montgomery Ward was unwilling to abide by the President's order?

Mr. WOLCHOK. No; I don't think we have had that, but we became terrifically alarmed when that became common gossip that Montgomery Ward would not listen to the President, and would not obey the orders of the War Labor Board.

Mr. CLARK. Now, what was the attitude of the labor leaders on that?

Mr. WOLCHOK. The labor leaders became very much alarmed, and about 150 labor leaders came down to us.

Mr. CLARK. I am trying to get at whether the problem was whether the labor leaders themselves wanted to go on strike, or was it their fear that they wouldn't be able to keep the workers from going on strike?

Mr. WOLCHOK. I want to tell you, Congressman Clark, that the labor leaders in the Chicago area were trying to avoid every possible strike that could be avoided. The workers, though, relay their feelings to the labor leaders. The workers became alarmed in the shops, in the factories, and in the mines.

Remember that we did not call a strike that could be blamed upon the union. They knew that this strike was fomented by the company. It was even set out in the newspapers—90 percent of the newspapers in the country said it. When the President sent a telegram to Montgomery Ward and to us, and we complied and they did not, the leaders came to us and said, "We are in danger. We fear that strikes will break out because there is a feeling of unrest on the part of the workers that Mr. Avery is setting a deadly pattern right now for the workers in that area."

Mr. CLARK. Mr. Wolchok, getting around a little more maybe than we have been a part of the day to what I would call the meat in the coconut, this act of Congress provides that wherever the Conciliation certifies that a labor dispute exists which may lead to substantial interference with the war effort, it shall go ahead and consider the case.

I am asking your opinion as a man who is familiar with that exact situation existing in Chicago, and as a patriotic American citizen in a solemn hour in our history. I am asking your opinion as to whether there was danger of such a strike in that area?

Mr. WOLCHOK. Mr. Clark, I give my word of honor to all of you gentlemen here and to all of the persons in back of me that this is the honest truth, that the danger of this strike spreading in the Chicago area was there if it had lasted another couple of days, if the President had not taken over the house. You would have had a chaotic condition there.

Let me show you how this would impair the war effort. Let me tell you what has happened in one other case, unfortunately, where we figured.

A conflict broke out in Pontiac, if I am not mistaken—Pontiac, Mich.—over a controversy between two unions of different initials, and sides were being taken. It was a strike, I think, in about 10 or 20 grocery stores. The dispute broke out in the street, and 10,000 workers in the Chrysler Motor Corporation, a war industry, went out on strike for 48 hours.

As a result of a controversy in 20 grocery stores.

Now, in this strike over here in this Chicago area, there was the A. F. of L. and C. I. O., the Railroad Brotherhood, and an independent union. They forgot their differences. They forgot all about it and became like one. Why? The president of the Railroad Brotherhood called me and Leonard Levy, and told us, "Do everything that you can in your power to see that this strike is settled, because there is a danger that we are going to have the railroads out on strike."

Mr. CLARK. That is all I have to ask.

Mr. WOLCHOK. I would like to read a paragraph from the statement of Walter Christianson of the Railroad Brotherhood of America. He says the following:

Due to the pressure put on the railroad officers by Montgomery Ward's officers, the railroad officers resorted to drastic action in intimidating our men and continually attempted to force them to perform their ordinary and customary duties in the Montgomery Ward's Chicago plant. In this way, a great deal of tension and bad feeling was building up day by day. If the strike of Montgomery Ward would have continued much longer, due to the temper of the men we have great doubts whether we could have held them in check. In other words, there was grave possibility that if the strike had not ended with the President's order when it did, that the railroad lines in the entire Chicago area might have been tied up.

This is a sworn affidavit in your record. There is one more thing, Mr. Clark, if you don't mind. Let me give you an illustration of what happened in the industry.

This is a copy of a telegram that was sent to Herbert March, Annapolis Hotel, Washington, D. C. April 19, 1944, 5 o'clock p. m.

Discussions here point to an immediate need for Washington moving to end Ward strike and return people to work. Serious repercussions among war plant workers. Anything can happen. You must immediately get Levin—

who is the president of the State council of the C. I. O.—

and McElligatt—

who is secretary of the council—

and yourself to see Murray and request—

Philip Murray, president of the C. I. O.—

and request Labor Board to order them back or Roosevelt to move. Matson of U. A. W.—

United Automobile Workers; he is the regional director over there—will be in and agrees to go along to Murray. He is worried. Wire back what is being done.

Signed "Bob Travis" and "Ernie Mayo."

That came during the strike from the offices of the C. I. O. saying that the war workers, the steel workers, and the rest of them, were terribly perturbed.

Now, when Avery said, "No dice," to the President, when he said, if I may use the vernacular, "Go out and jump in the lake," then of course it became all the more tense.

The CHAIRMAN. Mr. Elston?

Mr. ELSTON. Right along that line, Mr. Wolchok, you say that the labor leaders in and around Chicago were apprehensive that they couldn't keep their people in line, and if the strike occurred at Montgomery Ward's, they would all go out too?

Mr. WOLCHOK. No, sir. I will tell you what I have said. I have said the following, Mr. Elston: The workers cautioned the labor leaders, and told them that there was unrest in the mills and in the factories, unrest because if Mr. Avery gets away with what might suit him, some other people might try to do the very same thing. That is what I have said.

Mr. ELSTON. When were they going to go out on strike?

Mr. WOLCHOK. When were they going to go? If this strike had lasted a couple more days, probably you would have had it.

Mr. ELSTON. If the Montgomery Ward strike had lasted a couple more days, you mean?

Mr. WOLCHOK. That is right.

Mr. ELSTON. How many days did it last?

Mr. WOLCHOK. I think it was 13 days.

Mr. ELSTON. How many went out during the 13 days?

Mr. WOLCHOK. Pullman Standard went out.

Mr. ELSTON. How many persons were involved?

Mr. WOLCHOK. I don't know the exact number, but I think it counted in the thousands.

Mr. ELSTON. How many thousands?

Mr. WOLCHOK. I don't know—maybe around 7 or 8 thousand men.

Mr. ELSTON. How long were they out?

Mr. WOLCHOK. I think they were out about a week or so.

Mr. ELSTON. When did they go out?

Mr. WOLCHOK. They went out during the strike at Montgomery Ward.

Mr. ELSTON. Did they go back as soon as the President seized the Montgomery Ward plant?

Mr. WOLCHOK. I think shortly after that they went back to work. Of course, that was a difficult situation.

Mr. ELSTON. How long after that was it before they went back?

Mr. WOLCHOK. I couldn't tell you exactly, but I think immediately after that. Don't forget that we have had a headache in that thing.

Mr. CLARK. They had a controversy of their own, didn't they, that was independent of the Montgomery Ward strike?

Mr. WOLCHOK. I think the chairman of Montgomery Ward & Co. had a hand in that too.

Mr. ELSTON. Now, what evidence have you got that he had any hand in the Pullman strike?

Mr. WOLCHOK. He is a member of the board of directors.

Mr. ELSTON. Did they strike because he was a member of the board of directors?

Mr. WOLCHOK. Some of the strikers said that.

Mr. ELSTON. Do you know what the question involved in that case was?

Mr. WOLCHOK. I think I would ascribe it to Avery's defiance.

Mr. ELSTON. Do you know what the question was? When people go out on strike, they have a reason, and they indicate their reason. What reason was indicated when they went out on strike?

Mr. WOLCHOK. I think there was a wage question.

Mr. ELSTON. Yes, there was a wage question involved, wasn't there?

Mr. WOLCHOK. Let me finish, sir. There was unrest at that time.

Mr. ELSTON. There was a wage question involved, and it had absolutely nothing to do with the Montgomery Ward strike. Now, isn't that true?

Mr. WOLCHOK. Just a moment, sir. You know it is very interesting. I have spent about 27 years in this labor movement. I wasn't born only yesterday. My opinion is that the people in Pullman Standard hastened their going out on strike on account of our situation.

Mr. ELSTON. Was that question even mentioned when they went out on strike?

Mr. WOLCHOK. Of course.

Mr. ELSTON. Did they take a vote?

Mr. WOLCHOK. I couldn't tell you, sir.

Mr. ELSTON. They went out on a strike because there was a wage demand, wasn't there?

Mr. WOLCHOK. There was a wage question.

Mr. ELSTON. What other strikes were there during the period of time when the Montgomery Ward workers were on strike in the Chicago area?

Mr. WOLCHOK. I think the *Hummer case* was on strike during or afterward.

Mr. ELSTON. That was afterward, and it was not in Chicago. Now, I asked you about other cases in Chicago.

Mr. WOLCHOK. I think the *Hummer case* came during the strike, sir.

Mr. ELSTON. Well, in any event, it wasn't in Chicago. I am asking you about cases in Chicago.

Mr. WOLCHOK. It was not in Chicago, but it was a subsidiary to the Montgomery Ward Co.

Mr. ELSTON. You said there was great unrest in the Chicago area, and conditions would have been chaotic there in a matter of a week or so—

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. If the Montgomery Ward people went out on strike. They went out on strike, and were out 13 days, and there is only one strike you can mention that took place.

Mr. WOLCHOK. What do you consider this affidavit by Mr. Christianson to be?

Mr. ELSTON. I don't care what he said in the affidavit. I want to know whether there were strikes or not. Were there any?

Mr. WOLCHOK. The truckmen did not go through that line. The Railroad Brotherhood did not operate during that strike.

Mr. ELSTON. Now, just a minute. The truckmen went out on strike and wouldn't operate for a while, and before the strike was over went back.

Mr. WOLCHOK. Just a moment, sir. The truckmen went back a day and a half before the strike ended.

Mr. ELSTON. All right. They went back, didn't they?

Mr. WOLCHOK. And the Independent truckmen stayed out all the time. There were more Independent truckmen than Affiliated.

Mr. ELSTON. How many were involved in that?

Mr. WOLCHOK. Several hundred.

Mr. ELSTON. Did they go out on a strike, or did they just refuse to go through the picket line?

Mr. WOLCHOK. They didn't cross the picket line.

Mr. ELSTON. They didn't go out on strike, then, did they?

Mr. WOLCHOK. I don't know what you call it, but I know one thing—if people don't work and don't cross a picket line, they are not working.

Mr. ELSTON. There is a vast difference between not going through a picket line in a particular place, and working everywhere else. They did work everywhere else, didn't they?

Mr. WOLCHOK. They didn't work. They didn't produce.

Mr. ELSTON. Didn't they work elsewhere?

Mr. WOLCHOK. No, sir.

Mr. ELSTON. You mean they went out on strike and didn't work anywhere?

Mr. WOLCHOK. I don't think so.

Mr. ELSTON. Don't you know?

Mr. WOLCHOK. I think they have a steady route for Montgomery Ward, and those people carting merchandise did not work.

Mr. ELSTON. You can't tell us now whether they actually went out on strike, can you?

Mr. WOLCHOK. People didn't work.

Mr. ELSTON. Did they vote to strike or have a strike? Now tell us, did they or didn't they, or don't you know? We only want to get the facts.

Mr. WOLCHOK. I am giving you the facts as they are, Mr. Elston, if it hurts. The facts are that the truckmen didn't go through for about 10 days, and the independent truckmen didn't go through at all until the strike was settled. The Railroad Brotherhood didn't work. The Illinois Bell Telephone Union, an independent union, did not work. The upholsterers refused to work. Even the taxicabs would not go through and did not carry any merchandise through.

I don't know what else you want, sir, to show you the effect.

Mr. ELSTON. I think you know what I want. I grant you they didn't go through the picket lines, but I am trying to get you to answer whether or not there were strikes in Chicago in all of these different organizations that you have just mentioned.

Mr. WOLCHOK. Let me give you an answer that I hope will satisfy you, Congressman Elston. The point that I have made over here is the following: That we were scared of what was coming next had this strike been prolonged. I cannot give you the reason for it, just as I cannot tell you when a fire begins in a basement whether it is going to take over the whole house and the neighboring house. We knew that there was a fire. We knew there was danger in there, and we know only but one thing—the reason for this danger, for this fire, was because Mr. Avery did not want to live up to the order of the President.

Mr. ELSTON. You mentioned that many, many times, but you still haven't answered my question. You said you were apprehensive, and that you thought there were going to be strikes.

What I am trying to get at is, how many strikes really did occur in the 13 days the Montgomery Ward people were out? That is easy to answer.

Mr. WOLCHOK. The Pullman Standard I gave you. That is one.

Mr. ELSTON. Now, I want you to eliminate the ones who didn't go through the picket line. I want general strikes.

Mr. WOLCHOK. The Pullman Standard, as far as we are concerned, didn't have anything to do with us. They had something to do with management, as has been pointed out, Mr. Avery being part of that management.

Now, on the other hand, the telegram which I have read to you, unless you want to disregard it, wasn't written because they knew that I was going to be over here on the stand. That telegram said that there was unrest and that the War Labor Board should do something in that direction, and if not it was going to break.

Mr. ELSTON. Now, Mr. Wolchok, it is easy enough to sit down and write a telegram and say there is unrest, and it may have been written in good faith, and I am not saying it wasn't. After all, that is only somebody's opinion.

What I want to get at is, how many strikes actually occurred in Chicago during the 13 days that the Montgomery Ward workers were out?

Mr. WOLCHOK. Sir, I haven't got the exact number of strikes, but I assure you that I shall give you a complete list, and you will be able to put it in your files, showing exactly what occurred in Chicago. [See appendix.]

Let me emphasize, with your permission, one more thing: They say, "Everyone to his own trade" sometimes. We knew beforehand what might happen if something wasn't done. We knew and we felt

that if no relief was given that the workers would take that as a threat to their own jobs, and that contracts began to expire and if they should not be extended maybe the formula of Mr. Avery would have been used, and you would have Chicago tied up in knots.

Mr. ELSTON. That is just your opinion. Now, let's see what the facts were. You thought they might go out on strike if the President didn't seize the plant; isn't that it?

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. All right. The President did seize the plant.

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. How long did he keep it?

Mr. WOLCHOK. They kept it up to the 9th.

Mr. ELSTON. And then they gave it back, didn't they?

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. And the conditions are exactly the same today as they were before?

Mr. WOLCHOK. That is correct, sir.

Mr. ELSTON. And how many have gone out on strike because of it?

Mr. WOLCHOK. Just a moment, sir.

Mr. ELSTON. I am waiting. Go ahead.

Mr. WOLCHOK. Let's now reconstruct the whole story. Assuming right now that the contract has been extended by the Board, and assuming that there was no action there, the workers as we have told you were being fired. They were doing to them whatever they wanted to do. Something else that the company has done now—they have cut out a thousand items from their Chicago catalog and have sent them to different houses. They are taking our Chicago people right now who have been working steadily and are reducing them to part time. How long do you think a worker is going to stand for that? We are going to have another strike.

Now, Mr. Elston, if what you are saying right now is that you would like the proof of what this would have created, my concern here is not to have the proof of what I said was going to be. My concern is like that of a fireman who comes in with a hose to put out a fire, because we have a war on our hands and we want everybody to work and not to go out on strike.

Now, I say to you that I do not want any strike in Montgomery Ward. But you also know that Mr. Avery said he is not going to do anything to make a contract with the union. Assuming we go out on strike and war work is interrupted, who is going to take the blame for that?

Mr. ELSTON. Well, now, Mr. Wolchok, you know what my question was. You are a very intelligent man and you know exactly what my question was.

Mr. WOLCHOK. Thank you, sir, for that compliment.

Mr. ELSTON. Let's be frank with each other. My question was, How many organizations have gone out on strike since the Government gave up the Montgomery Ward property and conditions are exactly the same as they were before the property was seized? Now, that is easy to answer. How many organizations in Chicago have gone out on strike?

Mr. WOLCHOK. Don't forget that the entire world is of the opinion that we want something. They think that the union had a victory. It is unfortunate that they think so.

When the Government took over the house, that was big news. There were big headlines. But when the contract was extended, there were two lines in the newspaper saying the contract was extended. They didn't even know what it was.

In other words, they think right now that the union had a victory. When we look into that, you and I know there was no victory. Something else has to be done.

Mr. ELSTON. Aren't you willing to give me an answer on how many organizations have gone out on strike since the Government turned back the property?

Mr. WOLCHOK. I can't tell you, sir; I am sorry.

Mr. ELSTON. You don't know of any, do you?

Mr. WOLCHOK. I will make a study of it and I shall send you the results of that.

Mr. ELSTON. But the fact that you haven't had this chaotic condition that you envisioned, although nearly a month has passed since the property was turned back, certainly proves your apprehensions weren't well founded, doesn't it?

Mr. WOLCHOK. That is not so, sir. I am afraid that we are fighting at different angles.

Let me tell you something. I have said the following: Forget the results after the house was taken over. I have said that if the President had not acted, it would have been a different story. The President acted. That will have to be considered separately.

But if the President had not acted, if our strike had been prolonged, if there had been no help forthcoming from some agency that would say, "Now stop bickering and stop fighting and go back to work," I assure you, sir, that there would have been plenty of strikes in the area of Chicago. That is my point.

Mr. ELSTON. Yes, I know; but your apprehension is not borne out by the facts.

Mr. WOLCHOK. Thank God, it was not borne out by the facts, because if it were it would hamper the war work.

Mr. ELSTON. Do you think the President has to take them over again, now?

Mr. WOLCHOK. Why not, sir?

Mr. ELSTON. You do, then, do you?

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. How soon?

Mr. WOLCHOK. I don't know, sir.

Mr. ELSTON. You have got an idea about how soon this chaotic condition is going to break loose. How soon must the President take them over to avoid the chaotic condition?

Mr. WOLCHOK. Let me get my breath a minute, as my associates wish to confer with me.

Mr. ELSTON. I think we would get along better if just you and I could talk.

Mr. WOLCHOK. I think we will get along nicely.

Mr. ELSTON. I say, how soon do you think the President will have to take over Montgomery Ward Co. in order to avoid this chaotic condition which you seem to be apprehensive about?

Mr. WOLCHOK. I can not say when the President will take over.

Mr. ELSTON. Well, is this chaotic condition imminent?

Mr. WOLCHOK. When I spoke about the chaotic condition, that was the time the people were out on the sidewalk. Right now, the people are working inside.

Mr. ELSTON. Under exactly the same conditions.

Mr. WOLCHOK. No, sir.

Mr. ELSTON. Oh, yes. You said a moment ago they went back and are working under exactly the same conditions.

Mr. WOLCHOK. It is not the same conditions. I will tell you why it is not the same conditions. The representation question was solved. There is no contract, no agreement, nothing.

Now, the people are hopeful that this thing will be settled. We have the question right now before the War Labor Board. You remember Mr. Davis testifying over here. You remember what Mr. Davis said. "Gentlemen, when I think what we have done to this union, my face is red."

What did he mean by that? He meant that we had been a union that listened patiently, waited very patiently, and have done everything which the War Labor Board ordered us to do. We are following the same procedure right now. We are going to wait until there is some end to this. From here on the contract has been extended. The company will be notified to that effect. The company, I suppose, will give an answer "No dice", and excuse me for using these words. They say, "Nothing doing."

After we get through with that, we are going to ask the War Labor Board that the company shall comply. A compliance hearing will be held, and by God, it is an open hearing and I will testify to that. The War Labor Board gives a regular public hearing.

Now, after the public hearing, the Board will have then to decide what it will do with the case. If the Board decides to take the case, it will send it to the President for compliance. Of course, it is up to the Board. If the Board is not going to do anything at all, at that time it will be up to the union to decide what we shall do and how we shall secure a contract.

Maybe, Congressman Elston, you gentlemen here can persuade Mr. Avery to settle this question peacefully.

Mr. ELSTON. We hope you two can get together and settle it. We are not parties to it.

Mr. WOLCHOK. I think one of you Congressmen was asked to be an impartial arbitrator.

Mr. ELSTON. But you are getting a little bit away from the subject now. My inquiry is directed to the degree of apprehension. That was the thing that was alarming you in the Chicago area. Now, there is no great apprehension at the moment that everybody up there is going on strike, is there?

Mr. WOLCHOK. Let me see if this answers your question satisfactorily. I have been reminded of the fact that the president of the C. I. O. upon the receipt of the telegram I have read to you called all regional directors, all international presidents, by wire or by telephone, and told them that they should do their utmost in pacifying their people and to watch to see that they did not go out on strike. There shouldn't be an outbreak. In other words, they were to prevent a stoppage of work in war factories and war industries, especially in the Chicago area.

Mr. ELSTON. I am satisfied that the leaders didn't want a general strike, and I am also satisfied that the workers didn't want one—and

I distinguish workers from leaders—because wouldn't those workers have to violate their no-strike pledge if they went out on strike?

Mr. WOLCHOK. Well, you don't have to forget that a general runs the army and sometimes it is the same with the labor leaders. The labor leaders have a lot to say.

Mr. ELSTON. I know they do, but the leaders you say didn't want to go out on strike. Now, the workers generally have sons and daughters in the service and they are just as anxious to win the war as anybody else is.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. If they went out on strike, they would know they would be tying up production and would be violating their no-strike pledge.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. Do you think they would ignore those two things just because Sewell Avery defied the War Production Board?

Mr. WOLCHOK. Well, sir, you know when you provoke somebody, when you challenge somebody, when he feels that he is insecure, these things sometimes go out the window, at least for the moment.

Why don't people go on strike more right now? Not because we got good results from the War Labor Board, but because the workers think that somewhere there is a mid point of compromise but when the mid point is removed to the end, when they feel that there is no help, then there is no reason any more and then it is a question of self-protection. That is what it is.

Mr. ELSTON. I take it from the statement you made this morning that you were not very well pleased that the Government gave the property back to Montgomery Ward.

Mr. WOLCHOK. That is correct, sir.

Mr. ELSTON. Why did they give it back?

Mr. WOLCHOK. I suppose your guess is as good as mine. The legal minds that were here before your committee—

Mr. ELSTON. I just want to see if we agree.

Mr. WOLCHOK. Maybe we could agree on some points. The legal minds I heard here were fighting, and I suppose all of you are lawyers, gentlemen, and when Mr. Biddle was here and testifying and made his argument I remember I was rooting for him.

I disagreed with him on one point and I don't mind telling you, Congressman Elston. I disagreed on the mootness question, or whatever they call it.

Mr. ELSTON. I think you and I agree on that.

Mr. WOLCHOK. Just a moment. Wait until I finish, and then if you agree that is O. K. The union thought at that time, that they wanted to go into court and prevent the judge from declaring this thing moot. When the question becomes moot, then the Government moves out.

Now, I hope you agree now. We thought the Government should have stayed in.

Mr. ELSTON. The question didn't become moot until after the Government moved out. It was moving out by the Government that made the question moot.

Mr. WOLCHOK. So we wanted to hold the Government. Let me tell you what happened according to my knowledge in this question. The way I have read the directive is as follows: That the Government shall not relinquish the house within 60 days after industrial order

has been restored, and of course we expected when the Government moved in that the Government should take over Montgomery Ward. Now, what happened is as follows:

The impression that some people gathered that the Government held the house long enough to have an election unfortunately is a false impression. In my estimation, an error was committed against the union. The union, as we have put it here, didn't need soldiers to hold an election. We can have an election without soldiers. The Government took over these houses in order to enforce the War Labor Board directive.

Now, the house was turned back at 7 o'clock, and we were going to the N. L. R. B. to count the ballots, and the reporters informed us that Mr. Goodloe had written a letter to Mr. Avery returning the house to him.

Of course, we felt bitter about it but we didn't go out and challenge the President by going out on strike again immediately the same way Mr. Avery has done. We could have done it, Mr. Elston, but we didn't do it.

Why did we do that? We believe right now, after listening to everybody's testimony, and after the whole annoyance has cleared out from everybody's mind, that you will come to the conclusion that the President had to act and will have to act in the very same manner. Why the house was turned over is because on the floor of the Congress they screamed, "Mr. Avery was thrown out." On the floor of the Senate they screamed. They raised a hullabaloo about it, and I am afraid that public opinion had something to do with that.

Now, let's calmly, coolly, collectively—as we are doing here, Mr. Elston—discuss this question.

I will tell you—and you can get the figures better than I can—that there are 15½ million of us. If we are thrown out of the pale, so to speak, so that the President may seize only factories manufacturing armaments, ammunition, and the rest of it, you will authorize strikes in time of war, because what the President was doing was to curtail these strikes even if, as some people think, he didn't have a right to.

Now, I am no lawyer, Congressman Elston, but when I read article 7, I think it is, where it says "All industries," when it says all of them I don't know why we should be excluded from "all."

Mr. ELSTON. Now, we haven't got to the argument about the War Labor Disputes Act. We will come to that, but I think you have stated that the Government got out because public opinion, public indignation, was the thought generally entertained, and I can certainly agree with you about that.

Mr. WOLCHOK. Would you agree that the public was misinformed?

Mr. ELSTON. I agree that public indignation was an influence.

Mr. WOLCHOK. Would you agree that the public was misinformed?

Mr. ELSTON. Now, if the Government stepped out simply because of public indignation, the Government wasn't very apprehensive, was it, about these chaotic conditions that would develop?

Mr. WOLCHOK. The strike was called off.

Mr. ELSTON. Yes; I know it was called off before they ever went in, too.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. So if they went in because of the strike, they didn't have to go in at all because the strike was over before they went in.

Mr. WOLCHOK. Do you mean to say that only we have to live up to what the President says and the company doesn't have to live up to it?

Mr. ELSTON. No; I make no such statement as that.

Mr. WOLCHOK. That is exactly what you are saying. Let me read to you what the telegram says—

Mr. ELSTON. Don't misconstrue what I say. I say the law very clearly and very definitely and very positively in unmistakable language indicates what plants may be seized by the Government and under what circumstances and they are well defined in section 3 of the War Labor Disputes Act, and section 7 has no relation whatever to section 3.

Mr. WOLCHOK. That is your opinion, of course. I have heard it since I have been here in Washington sitting in these hearings. That is your opinion. But I maintain, if you ask my opinion, that you are wrong, and I hope you will forgive me, in your interpretation.

Mr. ELSTON. I don't object to anybody disagreeing with me.

Mr. WOLCHOK. I wouldn't like to. We are trying to get along nicely.

Mr. ELSTON. We disagree all the time. That is why we have courts.

Mr. WOLCHOK. I think you are wrong in that and I will tell you why. You say to us that the strike is ended and therefore the Government doesn't have to take over the house. Why was the strike ended? Let's talk about it man to man. Why was it ended? Because somewhere in the telegram the President said to us, "You instruct your people to go back to work, Mr. Wolchok, and you, Mr. Avery, sign the contract."

You would never dream that after we went back to work that Mr. Avery would call the President of the United States a dictator. I don't think you or anybody else can justify that.

Mr. ELSTON. Well, I happen to be on the committee that helped to write that law, and of course we just differ about it, and that is all. Now, let me ask you this question: If section 7 means what you say it means, and the President can seize any place of business in this country defined in section 7, he can seize any place of business whenever he feels that place of business might make a substantial contribution to the war effort and it has violated an order of the War Labor Board.

Mr. WOLCHOK. If it interferes.

Mr. ELSTON. Isn't that right?

Mr. WOLCHOK. If it interferes. Let me tell you something else. There is one thing you are overlooking, unfortunately. We have proof that Montgomery Ward is playing a part in this war, but not 100 percent on war work; but some portion of it is. They have admitted themselves that they are selling tires, wire fences, garages, and God knows what. In Chicago alone we had figures that these people have done something like two and a half to three million dollars in the year 1942. That is what we have proven. They had a catalog—and there was another one—that shows what they have in farm implements needed for farmers. You can send to Montgomery Ward for repairs of broken-down models, because they are agents for some of these implements.

There are people belonging to our union who rewind the motors, motors for cream separators, motors for various other things. If that firm would have done 2½ million dollars in business only in that, they would be considered on 100 percent war work because of the vast amount of business that they are doing. Of course, this 2½ million dollars sort of falls away, but they are part and parcel of this war work. If the farmer doesn't get his motor, if he can't deliver the milk to some war factory or whatever it is, and it is considered that this is necessary war work, that is one issue.

Mr. ELSTON. Do you contend that Montgomery, Ward & Co. is a plant, a mine, or facility as described in section 3?

Mr. WOLCHOK. I think your question has another question after it that I don't care to get into. What I contend is as follows: That nobody yet has defined "facility." That is what I am afraid of. In my estimation there is no definition yet of "facility." There is a question about it.

Mr. ELSTON. Section 3 defines it. Section 3 says—

a plant, mine, or facility equipped for the manufacture, production, or mining of any articles or materials which may be required for the war effort or which may be useful in connection therewith.

Mr. WOLCHOK. I understand that there is some other section somewhere else, like section 7, that reads entirely differently, but I am very much afraid that I am stepping upon ground where you can spring a trap on me when it comes to the law business. I don't want to get into that, and I don't want to get trapped into that, Congressman Elston. I am afraid I don't want to be a lawyer.

Mr. ELSTON. You compliment me when you think I can do that.

Mr. WOLCHOK. Do I? I am glad, sir. I have a son who is a lawyer, and that is enough—one in the family.

Mr. ELSTON. Well, we can argue all day about this section 7, about the relationship between section 7 and section 3.

Mr. WOLCHOK. We could argue a long, long time.

Mr. ELSTON. And we would get nowhere, because you have one view about it and I have another.

I just want to ask you this question: Did the Government settle any grievances while they were in control of the Montgomery Ward property?

Mr. WOLCHOK. Well, the story is as follows:

When we approached Mr. Taylor—I suppose you met Mr. Taylor, a very fine appearing gentleman—he listened to us and he said, "Yes, Mr. Wolchok, you are right. We will have to settle some of the grievances." Therefore, he issued an order and designated John Goodloe as a grievance officer or labor relations man for the Government. So we went immediately to John Goodloe and we said, "John, settle the grievances." He said, "I tell you what—you give us the grievances and I will give you an answer as to what we are going to do about it."

So we gave to John Goodloe a batch of grievances that high [indicating]. He said, "All that? All right, I will take a couple of them." So he took a couple of those grievances, the more acute ones, and looked at them, and said, "Six people shall go back to work."

Mr. ELSTON. Now, I didn't want you to go into all the details.

Mr. WOLCHOK. I want to finish, because I think you will be interested. What happened was as follows:

John sent these six men to work. When they came to the supervisor, the supervisor said, "Weren't you fired because you were on the picket line?" "Yes, sir, I was fired for that." "And who sent you back to work?" "John Goodloe." "Tell John to put you back to work. Get out of here."

So, they went out, the six of them, and they came to John and said, "John, the supervisors don't want us back." He said, "You are on the pay roll whether the supervisors like it or not, and if not the Government will pay."

Mr. ELSTON. I think you covered that story before in your statement. To make a long story short, they decided those cases in your favor and they decided a number of them against you; didn't they?

Mr. Goodman. No.

Mr. WOLCHOK. They didn't have enough time to decide. They only decided that these people should go back to work. We had 22 grievances, and 6 were selected from them.

Mr. ELSTON. I just want you to tell whether any were decided against you.

Mr. WOLCHOK. No. First there were the six cases that John Goodloe had taken up. There is one thing I must bring out because there is some place in the record where Mr. Barr has said very definitely before this committee that the Government did not reinstate them, that the Government did not take complaints. It is not true. The Government did take it up, but the company wouldn't let them go to work. Never mind about the six—they are still out in the street.

Mr. ELSTON. Well, let's go to some other subject.

Now, about this check you brought here this morning.

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. Have you got that check there?

Mr. GOODMAN. It is here.

Mr. ELSTON. Now, that check indicates that union dues were deducted on December 1, 1943.

Mr. WOLCHOK. Yes, sir.

Mr. ELSTON. 2,225 dues payable C. I. O., Local 20.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. \$2,048. Now, that was 2,225 dues in all of the units, wasn't it?

Mr. WOLCHOK. On the check-off cards; yes.

Mr. ELSTON. All of the Montgomery Ward units?

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. And how many persons were employed in all of those units at that time who belonged to the union?

Mr. WOLCHOK. I think at that time there must have been about 4,000 or so.

Mr. ELSTON. At that time there were 10,176 employees in the mail-order business alone, weren't there? Including union and nonunion workers?

Mr. WOLCHOK. A lot of extras, probably. A lot of people don't belong to our union. Don't forget that they have an administration building that probably employs two or three thousand people that we have no access to, and that we have not organized.

Mr. ELSTON. I think it is in the record. I don't believe that it can be disputed that there were approximately 4,700 employees eligible to vote in the election later held.

Mr. WOLCHOK. That is right. That was about 4 months later.

Mr. ELSTON. But there were more employees in December than there were later?

Mr. WOLCHOK. Extras, sir, Christmas extras, who were not eligible to join the union and not eligible to vote. They are part-timers, and we don't take them as members.

Mr. ELSTON. Were there more or fewer members in the union eligible in December than there were in May when this election was held?

Mr. WOLCHOK. I think then at that time there were less because I want you to know that there was this tremendous turn-over every day, and every month. There was also turned over some of our union people.

Mr. ELSTON. Do you know how many less?

Mr. WOLCHOK. I couldn't tell you exactly, because I haven't the records.

Mr. ELSTON. Do you know that there were any less or is that just an opinion?

Mr. WOLCHOK. I think there were less on account of the large turn-over. Let me give you an illustration why I say so. Before Christmas anybody can get a job. Usually there is a big turn-over and a lot of people, whether they belong to the union or not, before Christmas, see whether they can get a better job. There was a tremendous turn-over in that month.

There is something else that I want you to know which had an effect on some of the memberships, and that is that the company at that time already began to snipe at the union. There was a million-dollar suit, and so forth.

Mr. ELSTON. Assuming there were 4,700, there may, as you say, be less than that, but assuming for the sake of argument that there were 4,700, that 2,225 is less than 50 percent.

Mr. WOLCHOK. No, sir, it is not so; because as I have explained to you, you have a good memory, Mr. Elston, but you forget that there are a lot of people paying dues to us directly.

Mr. ELSTON. I understand that, but there is something else you didn't explain.

Mr. WOLCHOK. And that is what?

Mr. ELSTON. There are some people represented in this check who were not eligible to vote in the election.

Mr. WOLCHOK. How do you know, sir?

Mr. ELSTON. Isn't it true that before a person is eligible to vote he has to work so many days, or weeks?

Mr. WOLCHOK. For the sake of this election, we have taken 10 weeks; but at some other time we might take some other period.

Mr. ELSTON. What is the rule? How long do they have to work before they are eligible to vote?

Mr. WOLCHOK. There is no fixed rule, because in some instances it might be 30 days, or—

Mr. ELSTON. But you do have a rule. They have to work for 10 consecutive weeks, and work 20 hours during each of those weeks in order to vote?

Mr. WOLCHOK. That is a stipulation we made on account of this election, because in the last election we made another stipulation. In the last election we made, I think, only 60 days, not 10 weeks.

Mr. ELSTON. All right, let's assume then that it was 60 days. Those persons who were working those 60 days, if they had joined the union and agreed to a check-off of their dues would be represented in this check, although they would not be eligible to vote.

Mr. WOLCHOK. I don't think so.

Mr. ELSTON. Why not? If their dues were being checked off, they would be included in that check, wouldn't they? Just answer that.

Mr. WOLCHOK. I am not going to try to hedge on this question.

Mr. ELSTON. I know you are not; but I want the facts.

Mr. WOLCHOK. I want to give you the facts, sir. When you speak of 4,700 being in that plant in December your assumption is incorrect.

Mr. ELSTON. I only said, assuming for the sake of argument.

Mr. WOLCHOK. Then accept my estimate, sir.

Mr. ELSTON. The question now is another thing. The question now is whether or not persons who had joined the union but had not worked the required number of days or weeks, but whose dues were being checked off, would be shown in this check.

Mr. WOLCHOK. We don't seek such members, and we are not interested. Assuming there were a few in there, let me tell you a more important point. We have said before the War Labor Board that we represent a majority, and we produced this check and produced some of our books and ledgers to prove we had a majority.

The company, and I don't say you have pressed that point with the company, but the company maintained that we had only 20 percent. Assuming it is even what you said, 4,700 employees, this check represents more than 20 percent of the 4,700. Right now, what you are trying to prove is that we did not have the majority.

I say to you first of all that mind you, under these trying conditions, we went through an election and won the election, and surely there was more than 50 percent to run the election. If you put the two together, it is 65 percent. Where is the company's 18 or 20 percent?

Mr. ELSTON. You still haven't answered my question as to whether or not the check includes dues paid by members not eligible to vote.

Mr. WOLCHOK. I cannot tell you, and if you have any knowledge about that, I would like to hear it.

Mr. ELSTON. You don't know, then?

Mr. WOLCHOK. I do not.

Mr. ELSTON. Now, you said \$50,000 was given to you by two other labor organizations to carry on the fight against Montgomery Ward.

Mr. WOLCHOK. Not to carry on the fight, but to carry on the organization.

Mr. ELSTON. All right, carry on the organization. What organizations were they?

Mr. WOLCHOK. The United Automobile Workers and the United Steel Workers.

Mr. ELSTON. Did the persons who paid dues into those organizations consent that their money be used for that purpose?

Mr. WOLCHOK. Their general executive boards awarded this. The general executive board of the United Automobile Workers—

Mr. ELSTON. Did the members vote on it as to what was to be done with their money?

Mr. WOLCHOK. The constitution of the Automobile Workers provides—I wouldn't say exactly—that the general executive board

has the right to govern the affairs of the organization and all its expenditures.

Mr. ELSTON. Does it provide that they may make contributions of that size to another organization in no way connected with theirs?

Mr. WOLCHOK. That is as old as the hills, sir, because if you remember the history of labor you know that one organization helps the other one all the time. This is nothing new. In some instances, some unions have given tens of hundreds of thousands of dollars.

Mr. ELSTON. That may be, and it may be that it is entirely within your constitutional rights to do it. I am only inquiring whether it is.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. Now, you mentioned in your statement a couple of things to which I am going to refer. You mentioned the Montgomery Ward workers who eke out a poor living at \$20 or \$25 a week. In these days wages are stabilized and fixed by the Government, and the employer can't go above them even though he wants to; isn't that true?

Mr. WOLCHOK. Yes, sir; but it also provides that they shall not be substandard. Some of the people are getting only \$16 a week in there.

Mr. ELSTON. Well, you agree with me, don't you, that wages are fixed by law today, by Government agencies?

Mr. WOLCHOK. I have no quarrel over that. I think we are competent enough to prove before the War Labor Board that this company did not do the right thing by their workers, and I think we are competent to prove that they are entitled to from 5 to 10 cents an hour increase.

Mr. ELSTON. I think you said generally that the white-collar workers had not been well treated. I think I will agree with you on that, all right.

Mr. WOLCHOK. Why don't you help us so that these white-collar workers may get something more?

Mr. ELSTON. I think that is generally recognized.

Mr. WOLCHOK. Why, because we have such employers.

Mr. ELSTON. One reason is because the Government has not given them the same consideration they did to some others.

Mr. GOODMAN. They did in this case.

Mr. WOLCHOK. That is the point you brought out. We have been fighting here the whole afternoon, and you are fighting with me to prove that the Government should not give us the same treatment, and I say they should.

Mr. ELSTON. I never said the Government or anybody else shouldn't give you the same treatment.

Mr. WOLCHOK. What is the difference? Why is it that there should be any difference between the little small Hummer Manufacturing, a subsidiary to Montgomery Ward? They ought to be seized, and here is a tremendous, giant warehouse, situated in the heart of Chicago with 8,000 people, according to their words, and they go out on strike. Hummer should be seized. That is O. K.; but 8,000 white-collar workers—they have got to die.

Mr. ELSTON. Now, that is a nice speech. The only disagreement I have got with you on that is this: The law, laid down by Congress, permits the seizure of a plant like the Hummer Co. because it is engaged in the production of war materials, and is a plant, mine, or facility as described in section 3. Montgomery Ward & Co. is not

that type of plant, mine, or facility, so if there is any quarrel at all, it is with the law, and that is the law.

Now, you agree with me, don't you, that we are still a Government of laws and not of men?

Mr. WOLCHOK. By God, we are a Government of laws, and I am glad it is, because our very presence here proves that.

Mr. ELSTON. And you expect the people of this country to follow the law rather than the whim or orders of an individual?

Mr. WOLCHOK. We must follow the law, but Avery does not.

Mr. ELSTON. No, I agree with you that it must be equal.

Mr. WOLCHOK. That is right, sir; so make him obey.

Mr. ELSTON. You have got to ask Congress to amend the law if you want to provide for the seizure of a plant not described in section 3, and section 3 does not provide for the seizure of Montgomery Ward Co., because it is not a plant, mine, or facility, engaged in the manufacture of materials of war, whereas the Hummer plant or some other plants that have been seized are. Now, if that is the law, and if you assume that I am correct in stating the law—and I think many eminent authorities agree with me that that is the law—do you expect that law to be followed?

Mr. WOLCHOK. Let me ask you a question, and then I will answer yours. Let me see if you can answer this: Tell me, do you think that 15½ million people, workers, like we are, should live up to the no-strike pledge?

Mr. ELSTON. I expect anybody who makes a pledge will live up to it whether it be an employer or an employee.

Mr. WOLCHOK. Did industry give a pledge of no lock-out?

They did, didn't they?

Industry has given its pledge that there shall be no lock-out and that they are going to live up to the decisions of the War Labor Board.

Mr. ELSTON. Yet you said a moment ago that all the workmen in Chicago were willing to walk out simply because somebody else didn't live up to their pledge.

Mr. WOLCHOK. It is not as simple as you put it right now. Let me prove my point, and then it may prove your point and we will get an equation in here.

If industry accepts the War Labor Board, and if labor accepts the decisions of the War Labor Board, if there is a recalcitrant employer or labor leader, it is the business of the President and the War Labor Board to put them in their place.

Mr. ELSTON. Even though the law doesn't allow him to do it?

Mr. WOLCHOK. What do you mean?

Mr. ELSTON. If the law doesn't permit the President to seize that type of plant, do you say he should do it anyhow even though the law does not permit it?

Mr. WOLCHOK. I think that the President has emergency war powers. I think that this comes under the heading of an emergency.

Mr. ELSTON. Do you think he has powers outside the law?

Mr. WOLCHOK. I think it is within the law. I have heard right here yesterday somebody read the declaration of war and I think it has enough powers in it to cover Mr. Avery and his house.

Mr. ELSTON. If the declaration of war meant what was claimed for it by Mr. Biddle, then there wouldn't be any reason for Congress to make an appropriation; there wouldn't be any need for Congress

to pass a law. All Congress would need to do would be to go home and let the President run everything. You don't believe the declaration meant anything like that, do you?

Mr. WOLCHOK. Why not, sir?

Mr. ELSTON. Why not?

Mr. WOLCHOK. I don't know. I am simple minded in this business. When the Congress says that it can use everything, it didn't say you can only use the plant, mine, or facility. It says there "everything," and that means everything to me.

Mr. ELSTON. When Congress went along after that and appropriated money and did everything else that it has always done before, it should be obvious to you and everybody else that the declaration of war didn't mean anything except a declaration of war, and it didn't mean that Congress was abdicating and turning all its duties and responsibilities over to the President.

Congress never intended to do that, and every act of Congress since has indicated that Congress never intended to do that.

Mr. WOLCHOK. Let me answer you on that, Mr. Elston. We disagree on a very technical point. That is what I see as the outgrowth of your question, sir. You technically say to us that even if a strike would go on for 10 years, it wouldn't affect anything. In other words, there was no emergency. We contend, and we have a right to do it because there was an emergency there, that the President was informed by his aides and by the Attorney General of the United States that it is so. We have told the War Labor Board, "Gentlemen, when our strike breaks out it will also take hold in the very necessary factories and will interfere with the war effort." The War Labor Board finally saw this when the strike broke out, and they submitted that to the President who, as I interpret his mind, saw the danger in what was coming and therefore acted under the emergency.

Now, when you people start to compare Montgomery Ward to a grocery store on the corner, the push-cart peddlers, when you start to compare them with a drug store on the corner and the rest of it, then of course that is probably for the fun of it. But when seven or eight thousand people in one company—when you have something like 8,000 or whatever there are in a thickly and densely populated area—the President would let that go and hurt the war effort? I think that the President has acted wisely in not letting the house burn down and then come running in and say, "By God, the house has burned down." I think the President acted wisely.

Mr. ELSTON. That is because you are under the impression that he has great emergency powers even outside the law. Is that right?

Mr. WOLCHOK. All I know is one thing, Congressman. I know that we have stopped, or the President rather, has stopped this strike from spreading, and has avoided the stoppages that might have occurred in some of the mines or factories that are producing for the war effort and for the boys today on the beachheads.

Mr. ELSTON. Congress gave him the right to seize those. Congress didn't give him the right to seize anything he wanted to seize unless it is described in section 3. Now, there is where we differ. You said this morning that you believed in equal and exact justice.

Mr. WOLCHOK. That is right, sir.

Mr. ELSTON. Now then, if that is true, Congress has said that certain industries may be seized under certain conditions. Congress

has not said that other industries could be seized. Then it doesn't make any difference whether the other industries which Congress has not included in this section, is a large or a small one. The size has nothing to do with it. Don't you agree with me on that?

Mr. WOLCHOK. It has an effect.

Mr. ELSTON. Regardless of the effect, if the law doesn't permit it, the size has nothing to do with it.

Mr. WOLCHOK. I don't think I can agree with you. Let me read to you what the President said to us, if you don't mind.

Mr. ELSTON. I think you did read it, and I think you complied with his request, and I think we know what it was. I think he asked you to go back to work, and you went back; and I think that was commendable.

Mr. WOLCHOK. Thank you, sir; but what did we get for it? This is the Executive order:

AUTHORIZING THE SECRETARY OF COMMERCE TO TAKE POSSESSION OF AND TO OPERATE THE PLANTS AND FACILITIES OF MONTGOMERY, WARD & Co., LOCATED IN CHICAGO, ILL.

Whereas, after investigation, I find and proclaim that there are existing and threatened interruptions of the operations of the plants and facilities of Montgomery Ward & Co., located in Chicago, Ill., as a result of labor disturbances arising from the failure of Montgomery Ward & Co. to comply with directive orders of the National War Labor Board; that the war effort will be unduly impeded or delayed by these interruptions; and that the exercise, as hereinafter specified, of the powers vested in me is necessary to insure, in the interest of the war effort, the operation of these plants and facilities and of other plants and facilities which are threatened to be affected by the said labor disturbances.

Mr. ELSTON. It is that very order of seizure that this committee is investigating.

Mr. WOLCHOK. I just wanted to make sure that that is what I understood.

The CHAIRMAN. Mr. Curtis?

Mr. CURTIS. Have you identified the two men beside you in the record as to who they are and who they represent?

Mr. WOLCHOK. The two men sitting here? On my right is Leonard Levy, vice president of our organization, and regional director of the Chicago area.

Mr. CURTIS. You are the director of the Chicago area?

Mr. LEVY. That is right.

Mr. CURTIS. Mr. Wolchok, have you ever been employed by Montgomery Ward?

Mr. WOLCHOK. No, sir.

Mr. CURTIS. Your offices are in New York City then?

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. How much time have you spent in Ward's place of business in the last 3 years?

Mr. WOLCHOK. With the exception of the conferences that I have attended, and at one time I have spent close to a day, in a committee including Garrison—

Mr. CURTIS. I don't care who was there, I want to know how much time you have been in the Ward properties in Chicago.

Mr. WOLCHOK. If you will allow me, it will be interesting to you because the War Labor Board wanted to go through and see the facilities of the Montgomery Ward Co. We went through the entire plant from roof to basement. I just want to tell you that I spent a

day over there, and some people might be there a year and not see what we have seen. I think I know Montgomery Ward.

Mr. CURTIS. How long have you been in conferences in the Chicago properties of Wards?

Mr. WOLCHOK. Oh, for many days.

Mr. CURTIS. How many?

Mr. WOLCHOK. Let's say a dozen days.

Mr. CURTIS. Did I understand you correctly to say that you are going to have another strike at Ward's in Chicago?

Mr. WOLCHOK. No, sir; you didn't understand me to say that. Mr. CURTIS. Now, you have complained—and I followed your statement very closely—against unfair labor practices at Ward's, not confining your remarks to Chicago, but all throughout the country. Assuming that all of those complaints are true, do you know of any law that would authorize the President to seize Ward's Chicago property by reason of those unfair labor practices?

Mr. WOLCHOK. I think the Attorney General of the United States has testified over here. I think the Attorney General of the United States said that the President did have the authority, and, as a good citizen, I do believe the Attorney General is right.

Mr. CURTIS. I wasn't confining the question to what the Attorney General thought, or as to the broad authority of the President. I am asking if you know of any law that would give him authority to seize the property by reason of these unfair labor practices over many years over a wide area?

Mr. WOLCHOK. My discussion about the unfair labor practices of Montgomery Ward is a basis for proving what Montgomery Ward & Co. is doing, because I think this was a cause that has contributed a great deal to the upheaval and strike.

Mr. CURTIS. Your relation of the labor experiences in Albany, N. Y., and Barre, Vt., and wherever it was—you did not present them with any idea that they served as a legal ground in Chicago, did you?

Mr. WOLCHOK. You ask me whether I sought legal grounds?

Mr. CURTIS. I asked you whether or not you submitted those with the idea that they provided a legal ground for the seizure of the property in Chicago.

Mr. WOLCHOK. The War Labor Board has referred this case to the President of the United States for seizure.

Mr. CURTIS. That isn't an answer to my question.

Mr. WOLCHOK. I don't know, sir, whether you are asking me—

Mr. CURTIS. You took a lot of the committee's time to tell about the labor relations with Ward's over many years, including before the war, not in Chicago, but in many other States of the Union.

Now, I am asking you if you presented that with the idea that it had any legal bearing on the President's authority to seize the Ward properties in Chicago.

Mr. WOLCHOK. Let me answer you this way: I don't know what you mean, but I will try to answer to the best of my ability. I have sat over here in these hearings constantly.

Yesterday, the company was trying to prove here that they are law-abiding. Today I prove to you that they are not law-abiding; that this has to do with the strike.

Now, if you ask me whether we have provided proof for seizure; that is your question?

Mr. CURTIS. No. I am asking you if you contend that all this story about Ward's unfair labor practices throughout the United States over many years has any bearing or gives any authority for the President to seize the Chicago property?

Mr. WOLCHOK. It has only to do with labor relations, as far as that is concerned. Unless I am very thick, all I understand of your question is that you are asking me whether this has laid a basis for the seizure.

Mr. CURTIS. I ask if they gave any legal grounds to the President's seizure of the property in Chicago.

Mr. WOLCHOK. Legally I don't know anything at all; I am sorry.

Mr. CURTIS. Can either of your advisers answer that question? I would like to know.

Mr. LEVY. Mr. Curtis, we are not laying a basis for any legal question as to procedure. We provided evidence in relation to Montgomery Ward as it relates to labor relations and the policy with Montgomery Ward & Co. They have testified here over and over again that they obey the law, that they believe in collective bargaining, that they believe in dealing collectively with the union. We have offered testimony to the committee, for whatever value it has, to indicate that that is not so.

Laying the legal ground or basis has here nothing to do with the question of seizure.

Mr. WOLCHOK. He is not a lawyer either.

Mr. GOODMAN. I would like to add that if you are a lawyer, you will recognize that that evidence is clearly in point in determining whether or not the conditions that existed in the Montgomery Ward & Co. in their labor relations might have constituted a serious enough emergency for the President in his judgment to determine that the time had come to eliminate these threats to stable labor relations in this area.

Mr. CURTIS. In the absence of law to do it?

Mr. GOODMAN. I did not say that. What I said was that the labor-relations record of the Montgomery Ward & Co. is relevant to this inquiry. You must understand that the workers in the Chicago area, many of whom work in plants dominated by Sewell Avery, the same man who sat here yesterday as the chief executive of Montgomery Ward & Co., are affected by the history of the labor relations in the Montgomery Ward plants.

If those workers, seeing what happened in the Montgomery Ward plant, decided to take action into their own hands because of the futility in attempting to deal with Sewell Avery or any of his agents, they might have created the kind of emergency which the President very properly avoided by the seizure of the Montgomery Ward plant.

Mr. CURTIS. Now, do you contend, aside from the Montgomery Ward plant, that any employer in the United States who admittedly has a bad record in labor relations, extending prior to the war, that, by reason of that, the President of the United States can seize their property?

Mr. WOLCHOK. Are you addressing me?

Mr. CURTIS. Yes.

Mr. WOLCHOK. I contend the following, sir: That the War Labor Board is the judge of that, in my estimation. I think the War Labor Board has done a magnificent job in settling 6,500 cases. I think

that the War Labor Board, in their judgment, when they decide—and I think they are very clear in their decisions—I think when they decide, that is the time the President shall act.

Mr. GOODMAN. I would like to add, Mr. Curtis, to answer the specific point you are raising, that a bad labor record of any employer should certainly be a consideration to the President when he is attempting to determine whether or not a particular situation might create a kind of conflict that would seriously impede the war effort. If that is the question you are raising, I think, yes, our testimony here as to the bad record of Sewell Avery in all the companies he dominates is pertinent to the point of this investigation.

Mr. CURTIS. The point I am trying to get at is this: Do you feel that the power of the President to seize exists when he wants to punish or discipline someone that you individuals charge as unfair to labor?

Mr. GOODMAN. That is not involved here. If I understand you clearly, the question of our introducing this evidence is merely to the point as to whether or not the President of the United States, in his judgment, would feel that a serious enough emergency would be created in any particular case to justify his use of his broad powers under the War Emergency Act. That is the only question we are attempting to relate this evidence to.

Mr. CURTIS. Now, this 13-day strike that existed in the spring of 1944—you say no one called that?

Mr. WOLCHOK. That is right, sir.

Mr. CURTIS. How did it happen everybody knew the strike was going to occur?

Mr. WOLCHOK. It began way back. You know this company, and whenever something hurts them they holler very quickly.

Sometime during the time when we have had a contract, the company would telephone us and ask us to come in because some of the people were on what they called a so-called holiday. Our organizer in Chicago had to go right into the house and tell the people to go back to work and please stay at work.

Now, what happened in this case was that we were here before the War Labor Board that day, if I am not mistaken—Leonard Levy, myself, and Leo Goodman. We asked the Board, "What are we going to do about it?" The Board gave us an answer which was neither here nor there. That same night we came back to New York. The next morning they called us and told us that the workers refused to go in to work because there was no decision from the War Labor Board.

Mr. CURTIS. Who called you and told you that?

Mr. WOLCHOK. The president of the local, Henry B. Anderson.

Mr. CURTIS. What was the date of that telephone call?

Mr. WOLCHOK. I think the strike broke out on the 13th.

Mr. CURTIS. The 13th of what?

Mr. WOLCHOK. The 13th of April.

Mr. CURTIS. That was the date the strike started?

Mr. WOLCHOK. That is right.

Mr. CURTIS. Now, here is what I want to ask you.

I found out who called the strike.

Mr. GOODMAN. He did not tell you that Henry Anderson called the strike. He said Henry Anderson telephoned him that the strike was in existence, sir.

Mr. CURTIS. Who called the strike, then?

Mr. WOLCHOK. If you will let me finish, I will tell you who did not call it.

Mr. CURTIS. I don't care who did not call the strike.

Mr. WOLCHOK. Mr. Avery called the strike.

Mr. CURTIS. Now, when did he call that strike? You know that Mr. Avery didn't meet with the workers and call a strike in pursuance thereto. The president of the local called you up in Washington and said they were going to strike.

Mr. WOLCHOK. Let me tell you what happened. For the last 10 days prior to the strike, we had a terrible time trying to keep our workers at work. The workers came in and said to us, "We are not going to go back to work," and we told them every day in the week to go back and wait. People resigned from their jobs. In the morning when those people refused to go back to work, what happened was as follows:

We were in New York. I called him from the hotel and I said, "You go out and get hold of that strike and put it in shape." He was doing everything in his power to get back in time, and it took him something like a day. He had to get somebody to go to the War Department and beg for a plane, and finally when he came to Chicago, the strike was in full bloom and then they took control of the strike. From then on you can charge us for having control of the strike, but we did not call the strike. The strike broke out spontaneously.

Mr. CURTIS. Do you know whether or not there was a meeting and a strike vote taken prior to the time the president of the local called you?

Mr. WOLCHOK. May I have that question, please?

(The pending question, as recorded above, was read by the reporter.)

Mr. WOLCHOK. No, sir, I don't think there was.

Mr. CURTIS. Do you know whether or not the notice was given and the 30-day cooling-off period was observed, as provided in the War Labor Disputes Act?

Mr. WOLCHOK. Let me tell you something. If the Smith-Connally provided for a 30-day cooling-off period, then we are today an iceberg, because we were cooling off since November 8. We are icicles already.

Mr. CURTIS. Now, as a matter of fact, the union did not serve notice that they were going to have a strike and then take the 30-day period and conduct that strike vote as provided in the Smith-Connally law, did they?

Mr. WOLCHOK. Of course they couldn't. When a strike breaks out spontaneously, you don't get a strike notice.

Mr. CURTIS. The answer is, they didn't?

Mr. WOLCHOK. The answer is, we sent them back to work at the request of the President.

Mr. CURTIS. That was 13 days later.

Mr. WOLCHOK. Whenever the President asked us. If he asked us the same night, we would have sent them back to work.

Mr. CURTIS. Now, were there any strike aims declared or published at the time the workers went out on strike?

Mr. WOLCHOK. When the workers went out on strike, we had already published plenty.

Mr. CURTIS. What were your strike aims?

Mr. WOLCHOK. To obey the War Labor Board.

Mr. CURTIS. Anything else?

Mr. WOLCHOK. There was no contract.

Mr. CURTIS. But did you declare at the time any of the aims of the strike?

Mr. WOLCHOK. The aims of the strike were to see that the company should accept the War Labor Board's directive extending the contract until a new contract had been signed, or was in force.

Mr. CURTIS. The purpose of the strike was to compel the management to obey the War Labor Board order? Is that your answer?

Mr. WOLCHOK. That is correct, sir, in order to maintain any kind of condition in Montgomery Ward's plant. The strike at this time was for the company to live up to a governmental agency like the War Labor Board in its directive, and to obey the law.

Mr. CURTIS. Is there anything in the Smith-Connally Act which states that if the War Labor Board makes a decision and it is not lived up to, that to compel management to observe it, the workers may strike?

Mr. WOLCHOK. I don't know, sir. Of course, you are asking my opinion of the act and I am not going to give it because that is law. I don't know whether the Smith-Connally Act contains it or not.

Mr. CURTIS. In your opinion, did the individuals who took part in the strike at Ward's in the spring violate their no-strike pledge?

Mr. WOLCHOK. No, sir.

Mr. CURTIS. Why not?

Mr. WOLCHOK. My secretary, James B. Carey, I think has given an answer to that, and I subscribe to his answer. His answer was very clear—no strike, no lock-out. Mr. Avery called the strike because he practically locked us out.

Mr. CURTIS. How did he lock you out?

Mr. WOLCHOK. What do you call not signing an agreement? What would happen if tomorrow he would say that we should work for a dollar a day? Would that be a lock-out or not?

Mr. CURTIS. I think not.

Mr. WOLCHOK. You think not?

Mr. CURTIS. How do you define lock-out?

Mr. WOLCHOK. I define a lock-out when an employer wants to get rid of a worker, he cuts his wages, he demotes him, he gives him this treatment like Montgomery Ward gave. Do you want Mr. Avery to go out and say, "I don't want you"?

Mr. CURTIS. Do you submit that as your definition of a lock-out?

Mr. GOODMAN. There are a number of workers who were actually locked out by specific discharge from the company. Adolf Loresch, secretary of this local, was told not to report to work. He wanted to continue to make his contribution to the company's production. The company management refused him admission to the plant. Now, I think that, sir, qualifies and satisfies your narrowest definition of a lock-out.

Mr. CURTIS. You know that that is a case of an individual being discharged.

Mr. WOLCHOK. No, sir. We defined that as a lock-out.

Mr. CURTIS. He was discharged before he was refused admittance to the premises.

Mr. GOODMAN. He was discharged, if you want to term it that, as part of the company's effort to lock the union and its advocates out of the plant. It is a specific lock-out.

Mr. WOLCHOK. Let me add something to that. The company filed a suit of a million dollars before the contract expired, called the union all kinds of names, called them racketeers, and everything else under the sun. I am not able to define what a racketeer may be. Some of the Montgomery Ward people might fit into that, according to their O. P. A. record, but that is beside the point right now.

Now, the company does everything to its legally constituted union, and it has been proven time and time again. There is many an election we have had. You don't call it a lock-out? What do you call a lock-out?

Mr. CURTIS. Now, I want to ask you about these six men that were reinstated by Mr. Goodloe.

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. When were they discharged—while the Government was in possession or before that?

Mr. WOLCHOK. While the Government was in possession.

Mr. CURTIS. And Mr. Goodloe did not reinstate anybody that had been discharged prior to the Government's taking over, did he?

Mr. WOLCHOK. No. There is one thing I want to know. We wanted to see how this thing would work. We gave Mr. Goodloe 22 complaints, 22 discharges that had happened during the time when the Government had charge of the plant. He took 6 cases and studied them, and in his way of thinking these people were supposed to go back to work.

Let me tell you why those people were fired. These people were fired because they were arrested in the picket line. They weren't tried yet and, when they came back with the rest of the people, we sent them back to work, and the manager in the plant came over and said, "Your name is so-and-so?" "Yes, sir." "Were you locked out because of the picket line?" "Yes, sir." "You are discharged."

John Goodloe sent those six men back to work, and so they went. You know the rest of it.

Mr. CURTIS. Yes. As I understand it, they were men who were discharged while the Government was in possession?

Mr. WOLCHOK. That is correct; sir.

Mr. CURTIS. Now, in your prepared statement, on page 15, I found this paragraph [reading]:

When the Government seized the plant, not only did it do nothing to enforce the War Labor Board directive, or restoration of the provisions of the contract, but on top of that it did nothing to stop the company from continuing unfair labor practices under the very nose of the Government's occupancy. The company intensified its reign of terror during the period the Government was nominally in control.

Now, in view of that statement, what did Mr. Jesse Jones, Secretary of Commerce, mean when he stated that they were returning the plant, because the object for which it was taken had been completed?

Mr. WOLCHOK. That is what I keep on wondering. Maybe you can answer that.

Mr. CURTIS. No; I don't know to this day why they seized that plant.

Mr. WOLCHOK. I know why they seized the plant. I don't know why they returned it.

Mr. CURTIS. You think they should have kept it?

Mr. WOLCHOK. That is right, sir, until Mr. Avery signed that on the dotted line.

Mr. CURTIS. And you want them to seize it again?

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. When did you first talk to anybody about seizing this plant?

Mr. WOLCHOK. When did I talk to anybody?

Mr. CURTIS. Yes. As far as you know, when was seizure by the Army first mentioned to you?

Mr. WOLCHOK. Well, I don't live in a vacuum. I live in the United States, and I know what happens in cases where plants don't live up to the War Labor Board orders. We have asked the War Labor Board to do either one of two things.

Mr. CURTIS. When did you ask the War Labor Board?

Mr. WOLCHOK. At a hearing, it is an open hearing, that was held December 16 before the War Labor Board. Let me say exactly what I told the War Labor Board. I said to the War Labor Board as follows: "Gentlemen, either you make the company live up to the terms, extend its contract, or else tell us that we are not covered by the War Labor Board."

I said to them something else: "and if you find that the company does not comply, we ask you to ask the President of the United States to seize the house."

Mr. CURTIS. Your first request to the War Labor Board that the Government seize the plant was on December 16, 1943?

Mr. WOLCHOK. We asked them to enforce the order of the War Labor Board, and if they cannot, being that they are not an enforcing agency, they therefore will have to submit this controversy to the President for the President to rectify.

Mr. CURTIS. Did you ever renew that request that the President seize the Chicago properties of Montgomery Ward?

Mr. WOLCHOK. There was another hearing on March 29. At that hearing we took the very same position.

Mr. CURTIS. Where was that hearing?

Mr. WOLCHOK. At the War Labor Board in Washington, and it is a public record.

Mr. CURTIS. And what did you ask them at that time with respect to seizure?

Mr. WOLCHOK. We asked them at that time to do either of three things; either to extend the contract, to enforce it, or else that we are not responsible to the War Labor Board or the orders of the President, and are relieved of our no-strike pledge. We asked them to do that, whichever they wanted to do.

Mr. CURTIS. Now, on March 29 did you ask them to seize the property?

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. Now, when was the next time, after March 29, that you asked that the Government seize Montgomery Ward in Chicago?

Mr. WOLCHOK. After that we tried to go to different agencies. The secretary, Mr. Carey, after Phillip Murray made an appointment to see Judge Vinson, and several other people from Chicago, the people that sent these telegrams, myself and Leo Goodman, went to see Judge Vinson—

Mr. CURTIS (interposing). Mr. Carey, you, and Mr. Goodman, and who else?

Mr. WOLCHOK. People from Chicago, from the State Industrial Council of Chicago.

Mr. CURTIS. When did you go down to see Judge Vinson?

Mr. WOLCHOK. I think we went down to see him about a week before the seizure.

Mr. CURTIS. A week before the seizure?

Mr. WOLCHOK. That is right.

Mr. CURTIS. At that time did you request that they seize the plant?

Mr. WOLCHOK. Yes, sir; we did.

Mr. CURTIS. Who made that request?

Mr. WOLCHOK. I did, sir.

Mr. CURTIS. To Judge Vinson?

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. Now, did you ever make any other request to any Government agency for the Government to seize Ward's property at Chicago?

Mr. WOLCHOK. I think, if I am not mistaken, I sent a telegram to the President of the United States.

Mr. CURTIS. To the President of the United States?

Mr. WOLCHOK. Yes, sir.

Mr. CURTIS. Will you produce a copy of that telegram?

Mr. WOLCHOK. I said, I "think," and if it is so, I shall produce a copy.

Mr. CURTIS. The President is a rather important person and I should think you would remember if you sent a telegram to him, wouldn't you?

Mr. WOLCHOK. Since that strike I have sent numerous telegrams to the President, sir, and I have sent an answer to his telegram.

Mr. CURTIS. As you recall it, what was the date of that telegram?

Mr. WOLCHOK. I can't remember, sir, but if I have it I shall produce it. I haven't got it right here.

Mr. CURTIS. As you recall it, what was in that telegram?

Mr. WOLCHOK. Well, my two side advisers tell me they don't think I sent a telegram, but there is a doubt about it in my mind. If there was one you shall have a copy of it.

Mr. CURTIS. If you sent one, do you know what you told him?

Mr. WOLCHOK. If I sent it I probably told him of the conditions existing and asked him to take over the house.

Mr. CURTIS. Asked him to seize it?

Mr. WOLCHOK. Yes.

Mr. CURTIS. If you sent a telegram, was it before or after you called upon Judge Vinson?

Mr. WOLCHOK. I called upon Judge Vinson before. If I did send a telegram I must have sent it after I saw Judge Vinson. But if I didn't, please remember that I have a right to say that I didn't; please remember that.

Mr. CURTIS. But if you find that you did in fact send a telegram to the President, will you submit a copy of it?

Mr. WOLCHOK. I surely will, sir.

(See appendix.)

Mr. WOLCHOK. By the way, I want you to know, if you want to know what happened in Judge Vinson's office, that I didn't get any satisfaction whatsoever. I want you to know that. Shall that be on the record?

Mr. CURTIS. Congressmen sometimes appeal to Judge Vinson about O. P. A. matters and other things, and we are disappointed too; so.

it makes us feel better to know that other people have had the same experience.

That is all.

The CHAIRMAN. Mr. Wolchok, the real purpose of presenting that check here was to show that the company's statement that check-offs had dropped to 20 percent was not correct, isn't that true?

Mr. WOLCHOK. That is correct, sir.

The CHAIRMAN. Now the fact is that the supervisory employees in Ward's plant at Chicago never recognized the authority of Mr. Taylor or Mr. Goodloe, either one, did they?

Mr. WOLCHOK. They never did.

The CHAIRMAN. Not even after the court injunction, did they?

Mr. WOLCHOK. Not even after the court injunction.

The CHAIRMAN. They refused to put back on the pay roll these six employees that Goodloe directed them to put back?

Mr. WOLCHOK. That is right, sir.

The CHAIRMAN. So that they not only defied the order of the President, but they defied the spirit of the court order, did they not?

Mr. WOLCHOK. That is right, sir.

The CHAIRMAN. A good many questions of a legal nature have been propounded to you this afternoon, but I notice that none of them have referred to the Federal court decision in Kentucky which held that the President did have the power, without the War Labor Disputes Act, to seize property where he thought it was necessary to prevent interference with the war effort?

Mr. WOLCHOK. That is right, sir. I have here, if you don't mind, a copy of that whole case.

The CHAIRMAN. We have that.

You have testified as to Ward's labor record, as I understand it, for the purpose of showing its effect upon the employees who work for Ward's, and also its effect upon other members of organized labor; is that correct?

Mr. WOLCHOK. That is correct, sir.

The CHAIRMAN. Were you apprehensive that because of that labor record and because of his refusal to abide by the orders of the War Labor Board, that the strike in the Chicago plant might also spread to his other plants throughout the country?

Mr. WOLCHOK. Yes, sir; absolutely.

The CHAIRMAN. As a matter of fact, didn't it spread to Kansas City?

Mr. WOLCHOK. It did, sir, and we had to put them back to work twice. They went out once and then they went out again.

The CHAIRMAN. Now with reference to the order of the War Labor Board issued January 13 of this year, effective on January 15, as I understand it, that order provided for the extension of the terms of the contract?

Mr. WOLCHOK. That is right.

The CHAIRMAN. For a period of 30 days?

Mr. WOLCHOK. Yes, sir.

The CHAIRMAN. Provided, first, that the union agreed to an election; that is correct, isn't it?

Mr. WOLCHOK. Well, it is correct with only one exception, that at no time did the War Labor Board ask us to go to an election. I will tell you what the War Labor Board said in a minute, because that is a

very important point. The War Labor Board said to us, and let me read to you exactly what the War Labor Board said, because that is a very important point:

1. The terms and conditions of the contract between the parties, effective December 8, 1942, shall continue to govern the relations between the parties for a period of 30 days from the date hereof.

2. If, within such 30-day period, the parties, by mutual agreement, provide for the determination by the National Labor Relations Board of the question of employee representation, or, failing agreement, if the union within the said 30-day period petitions the National Labor Relations Board for a determination of the question (not for an election but for a determination of the question) the terms and conditions of the said contract shall be further extended.

Now I want to underline the following, "the determination of the question." In other words, the War Labor Board did not tell us to have an election, and what the company has said is not true.

Now, continuing:

* * * the terms and conditions of the said contract shall be further extended and shall continue to govern the relations between the parties until the determination of the collective bargaining representative of the employees involved, or until the further order of the Board.

The CHAIRMAN. It also provided, didn't it, Mr. Wolchok, that if the union failed to do its part toward a determination of the representation question, Ward's could apply for a modification of that order?

Mr. WOLCHOK. That is correct, sir.

The CHAIRMAN. They never applied, did they?

Mr. WOLCHOK. No, sir; they did not, and we put in a petition for recertification or election, and then, of course, we had the election.

The CHAIRMAN. Now Mr. Wolchok, I presume that in the city of Chicago, as in most cities where there are organizations of labor, that you have a central council, or what is sometimes called a central body of labor?

Mr. WOLCHOK. That is correct.

The CHAIRMAN. With which these local and international unions are affiliated?

Mr. WOLCHOK. That is correct, sir.

The CHAIRMAN. Isn't it a fact that whenever a strike occurs on the part of one union, that the members of that union seek support from the various other unions which are a part of that central organization in the city?

Mr. WOLCHOK. That is correct, sir, we do.

The CHAIRMAN. And therefore there is always the danger that a strike, no matter whether it is large or small, may bring to its support activities on the part of all of the unions in that area affiliated with the same general organization?

Mr. WOLCHOK. Yes, sir. We have taken up, if you don't mind, this question to that very body you are talking about, to the State Industrial Council, comprising affiliated C. I. O. unions within the State of Illinois. This is their affidavit that I have here and I would like to put it in the record. No—I believe it is already in the record. This is the council that you are talking about, and that is correct, sir.

The CHAIRMAN. In addition to the fact that the officers of the union sometimes bring a strike to the attention of other unions, isn't it true

that the individual members, the rank and file of the union, so to speak, seek support from every man in organized labor?

Mr. WOLCHOK. Yes, sir.

The CHAIRMAN. And that has a tendency to spread the effect of a strike to other industries and to other activities?

Mr. WOLCHOK. It surely does, sir.

The CHAIRMAN. Now to sum up your testimony, as I understand it, your position, Mr. Wolchok, is this, that as a part of the C. I. O. your organization feels that it was a part of the agreement, reached in December 1941, to try to prevent strikes in all industries, whether war or otherwise, for the duration of the war; is that correct?

Mr. WOLCHOK. Yes, sir; it is correct, and I would like to say something about that, sir.

We have had a very good record, and unfortunately this strike occurred at Montgomery Ward. We prided ourselves on the fact that we were part of this war effort and that we were able to contribute with whatever we could—money, blood banks, men, and everything else under the sun; and on this very point we feel that some of your colleagues are trying to bring out that we are not part of the general make-up of the C. I. O. We are, we are part of it, and we want to get the same benefits, we want to make the same contributions.

The CHAIRMAN. What I am trying to get at is the mental attitude of the people that are labor leaders, because I think it is important in the consideration of this problem by the Congress.

As I understand your feeling about it, it is that having assumed this obligation you feel that management of industry, whether it is strictly war industry or not, is also under an obligation to help to prevent strikes; is that correct?

Mr. WOLCHOK. Yes, sir; of course.

The CHAIRMAN. You feel also, as I understand it, that the agreement which was reached in December 1941 not only provided for no strikes and no lock-outs, but that it had another very important provision, which was the peaceful settlement of labor disputes?

Mr. WOLCHOK. That is correct, sir.

The CHAIRMAN. And regardless of whether there was a strike or a lock-out in the Montgomery Ward plant, or in any other plant, that there is an obligation on the part of management and labor, if they expect to live up to that agreement, to settle their disputes by peaceful methods?

Mr. WOLCHOK. Yes, sir, through the War Labor Board as the agency which has been doing this fine work for the past 2 years.

The CHAIRMAN. The third part of the agreement was the setting up of the War Labor Board?

Mr. WOLCHOK. That is correct.

The CHAIRMAN. It is further my understanding—and if I am not correct I want you to correct me—that you feel that if any part of industry, we will say mail-order houses, for instance, or retail stores, are not to be obligated against lock-outs, and for the peaceful settlement of labor disputes, then you feel that the members of organized labor working in such establishments should no longer be held to their agreement not to strike?

Mr. WOLCHOK. That is correct, sir, and that would be very dangerous.

The CHAIRMAN. Now Mr. Wolchok, if you were relieved of that agreement, with the present situation in the labor market and the shortage of manpower, do you think there would be much limit to what you could get in the way of wage increases?

Mr. WOLCHOK. I am very much afraid, if you will allow me to ponder this question, that stabilization would get out of gear very quickly, and I will tell you why.

For instance, in a strike like happened at Montgomery Ward's, there is a very interesting history that comes out of that. The workers, some of them, about a thousand, did not return back to Montgomery Ward's; they went and got better jobs. After that some more people were going out. If we were relieved of the no-strike pledge, Montgomery Ward's would come to terms, and they would have to pay far above what they are paying now, and if this would spread it would be far above the 15-percent formula, and far beyond it. We would try to bring our people up to at least the wages of the war workers who are working side by side with them. In other words, it would dislocate the entire economy and the entire system.

I hope that Congress will understand that. For instance, in this war, if they had left us alone we would have had the biggest chance to bring our people up to close to where the war worker is right now. But because we are hemmed in, we are held down in pay. Some of you gentlemen say to us that the War Labor Board has authority over us to hold us back on weekly pay and on prices, but no authority to seize. Then I think that if Congress tells us that we can do whatever we want, we would be the cause of dislocating the entire economy. That is my version on that, which goes far beyond anything else.

The CHAIRMAN. In other words, if I understand you, it is your contention, just as it was the contention of Mr. Davis of the War Labor Board, that we cannot have a no-strike, no-lock-out policy which excludes 15,000,000 workers from it?

Mr. WOLCHOK. That is correct, sir, and I say the same thing.

Mr. DEWEY. Excuse me, just a minute. I want to get this thing straight. I am quite in favor of this but I don't want to have exaggeration creep in. You say 15,000,000 workers. There are only 5,000,000 paid-up memberships in the C. I. O., I think, or 5½ million.

The CHAIRMAN. We are not talking about the C. I. O.

Mr. DEWEY. You are talking about 15,000,000 workers, and I am very much interested in that. We are talking here about Mr. Wolchok's union, or all of the C. I. O. labor force, and naturally, if we set aside all stabilization, and the hold-the-line program, and everything else, we are going to have a spiral, and that will probably set off an inflationary spiral in all wages, so let's talk about 65,000,000, then, if we are going to talk about anything. Otherwise, let's confine ourselves to the C. I. O. Local 20 that is here in Montgomery Ward. I am very much interested in what I think is Mr. Wolchok's admirable statement, but now I think things are being put into his mouth, or into the record, that do not belong there.

The CHAIRMAN. The figure of 15,000,000 was the figure used by Chairman Davis of the War Labor Board as being the number of employees who are employed in vocations or businesses which do not come under the strict interpretation of what is a war industry. He used that figure in his testimony and that is what I am talking about.

Mr. DEWEY. Mr. Davis used that figure?

The CHAIRMAN. Yes.

Mr. DEWEY. I have always thought that about 15 to 16 million was the group of people that did come under the term "war industry."

The CHAIRMAN. Well, I think I am correct, Mr. Dewey, in the figures I am using.

The point I was trying to get from Mr. Wolchok was, as Mr. Davis asserted as his opinion, whether Mr. Wolchok agreed with him that if those people are going to be told that there can be no enforcement of a War Labor Board order as to them, then what will the result be?

Mr. WOLCHOK. Well, sir, I have told you, but I would like to emphasize this once more. Take for instance, gentlemen, our industry alone, our jurisdiction, our jurisdiction throughout the United States. It figures somewhere around 6 or 7 million people. Aside from our jurisdiction take for instance transportation, and take some other industries, in the vicinity of about 15,000,000 or more people engaged in this kind of work, and it surely would affect that many.

Mr. DEWEY. If the chairman will excuse me, what is the total of unionized labor in the United States, paid-up membership?

Mr. WOLCHOK. The total of the unionized labor movement I think is about 13 or 14 million men and women.

Mr. DEWEY. That is what I thought.

The CHAIRMAN. Now Mr. Wolchok, if, after the War Labor Board had issued its order of compliance to Montgomery Ward, and after the President had sent his joint telegram to the union and to Mr. Sewell Avery, and the union had gone back to work, if the President had taken no further action what, in your opinion, would have been the effect on organized labor in this country?

Mr. WOLCHOK. The effect, sir, would have been the following: I think that first the War Labor Board, in my estimation, would be a useless instrument.

The CHAIRMAN. Would be what?

Mr. WOLCHOK. Would be a useless instrument. The Board, as has been explained very effectively by Mr. Davis, has done so much to settle this kind of controversy that it was shocking to them to find a concern like Montgomery Ward, shocking to them. In the entire history of the War Labor Board, as Mr. Davis has pointed out, there were only, I think, something like 16 noncompliance cases, and 7 or 8 of them have already come to terms. Now a good many of them Mr. Avery was affected by, and there are still some pending, as I understand it, such as Hummer, the U. S. Gypsum Co., the house in Chicago—that is 3—and Standard Pullman makes 4; and then there are some others.

Now if the President would do nothing else, labor would definitely serve notice, in my estimation, to the President, that they will not adhere any more to the War Labor Board's directives, because if that should be done then it would have meant the end of the no-strike, no-lock-out arrangement, and I don't think the President of the United States should permit that to happen, and that anarchy and chaos should be the order of the day.

I think that the President has acted wisely; I think that he has acted in a manner befitting a President in an emergency, when he was called upon to act. I think he has acted bravely, in spite of what some people have said about him and in spite of what Mr. Avery thinks about the President.

The CHAIRMAN. Mr. Wolchok, do you think that the leaders of organized labor—I am talking now about the international officers and the national officers of the various labor organizations—could hold the rank and file if the effectiveness of the War Labor Board is destroyed?

Mr. WOLCHOK. No, sir; and let me tell you something else that has happened. I hope I am not giving out any secrets, but at several conventions of very large unions the delegates were screaming that they would like to get relief from the no-strike pledge, because of industry's defiance, and sometimes because the War Labor Board didn't give them a fair deal, but that is aside from this question, but it was mostly on account of industry's defiance.

Now, here is something that does not penetrate my thick skull—I don't think it is so thick but it doesn't penetrate anyway—and that is the following: Industry, labor, and the public are sitting on the War Labor Board, a tripartite Board. We did not appoint industry, as Mr. Avery would like to appoint the industry members. We only appointed the labor representatives. Labor appointed labor. Industry appointed its own industry members; and Mr. Avery, and some others like him, say that they have no part in this business, have no part in it.

Now, when it comes to wages, they run after our representatives and ask them to sign Form 10's to go to the War Labor Board. In Albany they requested our organizer to sign a Form 10 for raises, for increases, that they asked us to join them in. And we have joined them several times in that.

In New York City our organizers joined with the management—although in other cases we are fighting—in order to put in Form 10's for some people. Do you know for whom? For supervisors; for somebody else. But we have done that in order to be what we call cooperative, peaceful.

Now, what is happening? They accept stabilization. That they do. They say that they are paying 26 percent above. That they accept; that is O. K. with them. Although they have made the biggest profit in the last 12 years, about \$200,000,000 profit. Now they come over and cry that they are paying more than anybody else. Forgetting that, that they have accepted. But the other part they didn't accept. In these directives that the War Labor Board gave to them they have accepted the directive that we should go for an election, but they did not accept the other half, and that is what they have to do.

The CHAIRMAN. Now, Mr. Wolchok, I want to get back to what I am trying to get at. Whether it is justifiable or not would be a question of opinion, but I am anxious to know what is in the minds of the working people of this country about this situation, because I think that that is just as important as anything else in this case. Do the working people of this country feel that any favor has been conferred upon them by this maintenance of membership compromise which the War Labor Board has initiated?

Mr. WOLCHOK. No favor at all, sir. That is practically the only contract we have it in. All the contracts that I have read to you, most of them have union and closed shops.

The CHAIRMAN. Does the rank and file rather feel that they have made a sacrifice in accepting that?

Mr. WOLCHOK. We surely did, absolutely did, because under maintenance of membership some unions are busted up, a good many of them are going to the wastebasket on account of that maintenance-of-membership clause.

The CHAIRMAN. I think that is all I want to ask, and if there is nothing else we will take a recess—

Mr. WOLCHOK (interposing). Mr. Chairman, if you don't mind, I have missed one thing. I have read from this ad which contains a good deal of information, and I would like to introduce that into the record, with your permission.

The CHAIRMAN. Is there any objection? If not it will be included in the record at this point.

Mr. WOLCHOK. Thank you, sir.

(The advertisement referred to is from the Washington Post of Tuesday, June 6, 1944, and is as follows:)

[From The Washington Post, Tuesday, June 6, 1944]

Mr. Avery,

WHICH WAR DO YOU WANT TO WIN—
YOUR OWN WAR AGAINST LABOR, OR
THE NATION'S WAR AGAINST THE AXIS?

D-Day Is About To Start!

For us at home, this is going to intensify the crisis in manpower. This crisis has already reached staggering proportions requiring heroic measures to control all hiring of male workers, beginning July 1.

Your labor policies have interfered and are still interfering with the efficient use of manpower in the Chicago district and elsewhere.

You yourself reported to your stockholders that, in order to maintain a working staff of 78,000 for all the Montgomery Ward establishments, the company had to employ 151,000 people in 1943. This turn-over of 193 percent is directly due to your policies of intimidating and underpaying your workers.

Montgomery Ward's methods of terrorizing employees are a matter of court record and have been described and condemned by the courts in a number of cases. Here is one instance out of many—the case of *Hornin v. Montgomery Ward* (120 F. (2d) 500 (decided by the Circuit Court of Appeals of the 9th District)), concerning the Ward's store at McKeesport, Pa. The facts, as recited in the court's decision, were:

Store manager, seeking to stop theft, forced culprit caught with stolen goods to implicate an innocent employee by threatening to fire the culprit's girl friend who worked in the store. The manager had innocent employee taken out of his home at night, locked up, and held incommunicado, not being permitted to communicate or tell his family till the next day.

Said the court: "Stark (the manager) by threats forced Kasmareck (the thief) to give false testimony which, had it been unrefuted, would have been sufficient to convict Hornin. This Stark did with a wantonness and disregard of the rights of others which plainly indicates that the want of probably cause was wholly unimportant to him. He apparently felt the need of an example for disciplinary purposes at the store, and the means by which he obtained his victim mattered not at all. * * *

"And there is also evidence that the defendant company's principal or main office knew of Stark's (the manager's) action with respect to the institution and maintenance of the criminal proceedings almost from the outset and never made any objection thereto."

Judgment for employee sustained.

Mr. Avery, did you remember this when you were gently carried from your offices April 27?

The American way of providing for fair and stable labor relations is embodied in the National Labor Relations Act. This law requires that employers must bargain collectively with representatives of the workers' own choosing.

Upholding this act, Chief Justice Hughes declared:

"Long ago we stated the reason for labor organizations. We said that they were organized out of the necessities of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and resistant arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer. * * * Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it. Congress could seek to make appropriate collective action of employees an instrument of peace rather than of strife."

In a big advertising campaign—paid for to the extent of 81 cents on the dollar by the people of the United States through loss of excess profits taxes—you have repeatedly stated that you have "no quarrel with the principle of unionism, no quarrel with the principle of collective bargaining," and that "Ward's stands ready at all times to bargain collectively with any union which has been selected by a majority of the employees in any appropriate bargaining unit."

But you did NOT tell the public that Ward's has been twice convicted by Federal circuit courts of appeals for spying on the activities of workers. (The Seventh Circuit Court of Appeals issued an order in 1939 directing the Montgomery Ward plant at Portland, Oreg., to stop the practice of using undercover agents to observe and report upon the union activities of the employees. In 1941, the Eighth Circuit Court of Appeals issued a similar order involving the St. Paul, Minn., plant. Both these court orders required the company to cease using labor spies.) You cannot bargain sincerely unless you give up your use of labor spies and abandon your efforts to break up the union.

Even when you failed to break up the unions of your workers and met with them for the purpose of collective bargaining, you have failed to show an attitude of good faith. The Ninth Circuit Court of Appeals denounced your attitude as a "hypertechnical approach" and as involving "stalling tactics." "Throughout the conferences," said the court, "there is apparent a studied design of aloofness, of disinterestedness, of unwillingness to go forward, upon the part of Ward's."

The New York State Labor Board also declared in 1942 that Ward's did not bargain collectively in good faith. This finding was sustained by the New York Supreme Court. The court declared that the position taken by the company did not constitute good faith in bargaining. The judgment of the New York Supreme Court was affirmed by the appellate division, to which you insisted on carrying the case.

Mr. Avery, we challenge you—

to quit stalling,
to quit your private war against labor,
to join the war effort,
to bargain in good faith with our local 20, and with every other union of your employees, and sign contracts that will eliminate turn-over, waste of manpower, help the workers to spur production and win the only war which the American people is interested in winning—the people's war of liberation against the Nazi and Jap tyrants.

SAMUEL WOLCHOK

President, United Retail, Wholesale and Department Store Employees of America
Affiliated with the Congress of Industrial Organizations

SEWELL AVERY'S OPERATING MANAGER TELLS THE FACTS ON TURN-OVER

In a letter written on June 8, 1942, Mr. Odorizzi, mail-order operating manager, wrote:

"Our labor turn-over problem is becoming increasingly serious. If we continue to replace employees that leave us at today's rate, if we permit our current high rate of turn-over to continue, during the next 12 months, we will employ approximately 25,000 new employees to replace an equal number that will leave our employment. The fact that we are able to replace those that leave us indicates that Wards as a company can and does attract employees who come with us expecting opportunity and progress.

"Why do new employees become dissatisfied? Why does a large percentage leave us during the first 2 or 3 months of their employment? When you find the answers to these questions, you will find the reasons for your labor-relations problem. Some employees become dissatisfied and leave—others become dissatisfied and stay with us, but reflect their dissatisfaction in the performance of their jobs. One is as bad as the other.

"Why are we anxious to reduce our labor turn-over? All of you have had occasion to witness the unfavorable effects of labor turn-overs on the performance within your respective departments. The reasons we are anxious to reduce our labor turn-over can be summarized briefly as follows:

- "1. Good employees are becoming increasingly difficult to find.
- "2. New employees produce less work and make more mistakes during their training period—our mistakes displease our customers.
- "3. At the current rate of turn-over, we will spend more than a million dollars to train new employees during the next year.

"Is there anything that you personally can do to retain our good employees? People come to work for Ward's because they believe Ward's is a good place to work and because they believe they see opportunity. Only a small percentage of the employees that leave us do so to enter military service. A large percentage of the employees leave for reasons that are largely within the control of our department heads and supervisors. It is important that each one of you clearly understand not only the reasons why employees leave us, but specifically those things that each one of you can do to improve the company's relationship with its employees to the extent that our labor turn-over will be reduced. For your guidance, I am attaching a summary of the most important factors that affect not only our turn-over, but your day-to-day relationships with your employees. The company's personnel policies are simple. The fact that I am carrying this message personally to every department head and to every supervisor in all of our mail-order houses indicates the importance that our management places on these policies."

Mr. Odorizzi's memorandum accompanying the letter listed as "the most important factors that affect not only our turn-over, but your day-to-day relationships with your employees," the following:

1. "Reclassification of pay rolls" (referring to the fact that "in many instances employees are kept on temporary or part-time pay-roll classifications even though they are getting full-time employment").
2. "Proper administration of Ward's wage policy."
3. "Our wage increase policy" (referring to the periodical moving of employees in each classification along a scale between given minimum and maximum rates).
4. "Appraisal of employees' performance" (stating in part that "the success or failure of our wage plan depends entirely on the fairness of your appraisals").
5. "Promotions" (stating in part that "in the case of promotions, employees are sometimes transferred at a rate considerably lower than the rate for the job, and there is hesitancy to bring the employee's rate up to what is justified by the new responsibility").
6. "Assist your employees to improve their performance" (* * * * "in reviewing and appraising employees, and in handling wage increases, instances will be brought to light where employees are not making satisfactory progress. The unsatisfactory employee should be recognized quickly within a maximum of 60 days. He should not be permitted to continue to turn in an unsatisfactory performance that will not enable him to progress as he had hoped when he came with Ward's. Not all employees whose work is rated as unsatisfactory are actually unsatisfactory employees." Then Mr. Odorizzi stated that an employee's failure might be due to "lack of proper training," "improper application of production control," not suiting him to his job, and "real or imaginary" grievances.)
7. "Know and understand your employees."
8. "Don't be a big shot."
9. "Talk to the employees that leave us."

Commenting on this letter a panel of the War Labor Board wrote on August 1, 1942: "It will be observed that six of these nine items had to do entirely or predominantly with wage matters, and the remainder with personal attitudes of supervisors affecting the employees' feeling of security. Thus in this letter are reflected some of the reasons for the union's demands for increased wages and increased job security."

The CHAIRMAN. The committee will now adjourn, subject to the call of the Chair.

(Whereupon, at 6:20 p. m., the committee adjourned, subject to the call of the Chair).

APPENDIX

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., July 21, 1944.

HON. ROBERT RAMSPECK,
Chairman, Committee to Investigate Montgomery Ward & Co. Seizure,
House of Representatives, Washington, D. C.

MY DEAR MR. RAMSPECK: On June 13 you requested from me a list of Government agencies, departments, or bureaus dealing with labor relations together with a brief statement of the functions of each of these agencies, departments, or bureaus. In order to comply with your request, we have surveyed the activities of Government agencies having to do with problems and programs affecting labor.

To furnish the information requested, it was deemed advisable to classify the labor activities of the agencies by primary purpose, function, or responsibility. The term "labor relations" is subject to varying definition. For the purposes of your inquiry, I have assumed that your interest is, first, in those agencies having basic responsibilities pertaining to the terms or conditions of employment, including the adjustment of labor disputes. A considerable number of agencies perform functions not embraced in this concept of labor-relations activities which may, however, be considered germane to the broader scope of governmental activities affecting labor. Accordingly, I have attempted to meet both the primary and maximum needs of your request by preparing an analysis which divides the agencies into two classes.

Part I of the attached appendix lists and briefly describes the functions of the agencies which fall within the first group. In part II of the appendix you will find listed and briefly described the labor functions of the second group.

The agencies comprising the first group are those whose primary functions are to adjust and decide labor disputes, or to regulate conditions of employment such as wages, hours, working conditions, and child labor. They are the Department of Labor, the National Labor Relations Board, the National War Labor Board, the National Mediation Board, the Railroad Adjustment Board, the Office of Economic Stabilization, and the Committee on Fair Employment Practice.

The Department of Labor through five of its constituent units performs functions with respect to labor relations. The Commissioners of Conciliation mediate and conciliate labor disputes threatening the industrial peace. The office of the Secretary of Labor determines prevailing wage rates for purposes of public construction contracts in pursuance of the Davis-Bacon Act (46 Stat. 1494); interprets and administers the overtime premium pay policies of the Government, and administers the Anti-Kick-Back Act. By authority of the National War Labor Board, the Wage Adjustment Board in the office of the Secretary applies wage stabilization policies of Government and adjusts labor disputes in the public and private construction industries. The Children's Bureau is responsible for the enforcement of the provisions of the Fair Labor Standards Act (29 U. S. C. 201) and the Public Contracts Act (41 U. S. C. 35) proscribing illegal child labor. The Wage and Hour Division is responsible for the enforcement of minimum wage, maximum hour, and related provisions of the Fair Labor Standards Act and the Public Contracts Act.

The National Labor Relations Board is responsible, pursuant to the National Labor Relations Act (29 U. S. C. 151) for the adjudication of charges alleging commission by employers or their agents of unfair labor practices, and for the investigation and resolution of questions concerning representation affecting commerce. It is also given the responsibility under the War Labor Disputes Act. (Public Law 89, 78th Cong.) for conducting strike polls among employees who have filed appropriate notices of disputes threatening interruption of war production.

The National War Labor Board is responsible for the settlement of wartime labor disputes which are not under the jurisdiction of the National Labor Relations Board or the National Mediation Board, and which have been certified to the Board by the Secretary of Labor or over which the Board has assumed jurisdiction on its own motion, under Executive Order 9017, dated January 17, 1942, and the War Labor Disputes Act (Public Law 89, 78th Cong.). The Board conducts hearings with respect to disputes within its jurisdiction, issues orders in settlement of such disputes, and undertakes appropriate action to obtain compliance. The Board has authority to change the terms and conditions of employment during the 30-day period following the filing of a strike notice pursuant to the War Labor Disputes Act or during Government operation of any plant, mine, or facility, possession of which has been taken by the Government under that act.

The National Mediation Board conciliates and mediates disputes between employers and employees covered by the Railway Labor Act as amended (45 U. S. C., ch. 8) and also resolves questions concerning representation among such employees. Emergency boards to consider and report upon such disputes, usually appointed by the President under section 10 of the act when a strike threatens in the railroad industry, are now generally appointed by the Chairman of the National Railway Labor Panel established by Executive Order 9172, dated May 22, 1942.

The National Railroad Adjustment Board adjudicates disputes arising out of grievances or out of the application or interpretation of agreements between labor and industry, subject to the Railway Labor Act, as amended.

To the Director of the Office of Economic Stabilization has been delegated the responsibility for developing and supervising the application of policies for wage and salary stabilization in pursuance of the act of October 2, 1942 (56 Stat. 765) and the Stabilization Extension Act of 1944 (Public Law 383, 78th Cong.) which amend the Emergency Price Control Act of 1942. The responsibility for application of the stabilization policies to various segments of the population is divided among the following boards and agencies. The National War Labor Board applies wage stabilization policies to general industry and the trades, subject to approval by the Director of Economic Stabilization of wage adjustments which involve increases in price or in cost of production to the Government. The War Food Administration is responsible for stabilization of agricultural wages and salaries in accordance with national wage policy. The Department of the Treasury through the Salary Stabilization Unit of the Bureau of Internal Revenue is responsible for administration of the wage stabilization policies with respect to salaries in excess of \$5,000 a year. The Emergency boards of the Railway Labor Panel have authority to make final determinations affecting wages of employees subject to the Railway Labor Act in conformity with national wage policies (Stabilization Extension Act of 1944, Public Law 383, 78th Cong.). In uncontested cases the Chairman of the National Railway Labor Panel makes such determinations. The Director of Economic Stabilization also has additional responsibility (Executive Order 9370, dated August 16, 1943) for dealing with labor relations in the nature of authority to obtain compliance with the directives of the National War Labor Board when such directives have not been duly observed by labor or industry.

The Committee on Fair Employment Practice is responsible for advising Government agencies, management, and labor as to means for achieving the elimination of discrimination due to race, creed, color, or national origin in regard to the hire, tenure, terms, or conditions of employment or union membership of worker.

It is further assumed from your letter that you do not consider the term "labor relations" to be applicable to the personnel relations existing between agencies of Government and their employees. Therefore that aspect of the Government's operations is not covered here.

In addition to the agencies enumerated and briefly described in the foregoing and in part I, appendix, there are a number of the agencies concerned with labor supply such as the War Manpower Commission, the Railroad Retirement Board, the Selective Service System, etc., which perform services which at times enter the field of labor relations. However, since their primary labor functions relate to training, rehabilitation, and placement of labor, they are not considered for the purpose of this inquiry to be dealing with labor relations. They are described in part II of the appendix.

There are also a number of Government agencies, such as the War Department, Navy Department, War Production Board, Maritime Commission, etc., which are responsible, particularly in the war period, for the procurement of goods and services through contracts with suppliers. Since they are vitally

concerned with obtaining maximum production of goods and services contracted for, it is evident that anything which tends to affect adversely the capacity of the suppliers to produce their maximum of goods and services immediately becomes a matter of deep concern to those agencies. Thus, these agencies find themselves incidentally involved in the labor relations problems of their suppliers where such problems threaten to or actually do interrupt production. Accordingly, they maintain staffs whose function it is to anticipate difficulties and, when they arise, to advise and assist such suppliers and their employees to enlist the full services of the Government agencies which have the direct responsibility for dealing with labor relations. These labor functions of the procurement agencies are also described in part II, appendix.

There are other agencies whose research and studies are necessary for the formulation of Government policies and for the operation of labor-relations programs of the action agencies in the field. These include such agencies as the Bureau of Labor Statistics which supplies data on costs of living and wage rates, the Division of Labor Standards which provides advisory services to industry, labor, State governments and Federal Government agencies on safety and health in industrial operations, legislative standards for conditions of labor, etc., the Women's Bureau which performs research in problems particularly affecting women in industry, all in the Department of Labor; and the Railroad Retirement Board and the Social Security Board, through its Bureau of Employment Security, which are concerned with unemployment insurance as provided by the Railroad Retirement Act (49 Stat. 957; 50 Stat. 307) as amended, and the Social Security Act, as amended (49 Stat. 620), respectively. These are also listed and described in part II, appendix.

I hope I have given you the information you desire, and shall be glad to furnish any other assistance I can to the committee.

Sincerely yours,

HAROLD D. SMITH, *Director.*

APPENDIX—PART I

Following are described the Federal labor relations agencies whose primary functions are to adjust and decide labor disputes or to regulate conditions of employment such as wages, hours, working conditions, and child labor.

DEPARTMENT OF LABOR

The Conciliation Service in the office of the Secretary of Labor is authorized by section 8 of the act of March 4, 1913 (29 U. S. C. 51) establishing the Department of Labor. The Commissioners mediate labor disputes wherever and whenever industrial peace is threatened, usually upon invitation of one or all of the parties to the dispute, but also upon direct intervention. While the National War Labor Board is, under Executive Order 9017, authorized to take original jurisdiction in labor disputes which require its direct intervention, the clear intent of the order is that normally only disputes which the conciliators have been unable to adjust shall be certified by the Secretary of Labor to the National War Labor Board for findings and orders.

The office of the Secretary of the Department of Labor makes determinations on matters subject to the Davis-Bacon Act. The Davis-Bacon Act (46 Stat. 1494) as amended, provides that contracts in excess of \$2,000 entered into by the Federal Government for construction shall contain a provision for minimum wages to be paid various classes of laborers and mechanics which shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of employees in the vicinity where the work is to be performed. The Secretary is responsible for making these determinations.

The Secretary is also responsible for interpreting officially Executive Order 9240 as amended by Executive Order 9248, which appertains to premium pay for overtime work and for work on holidays, Saturdays, and Sundays.

Administration of the Anti-Kick-Back Act (48 Stat. 948) is vested in the Secretary of Labor.

The Wage and Hour Division of the Department of Labor has three main functions:

(a) Enforcement of the Fair Labor Standards and Public Contracts Acts. The Fair Labor Standards Act (29 U. S. C. 201) establishes minimum wages and maximum hours of employment, and the Public Contracts Act (41 U. S. C. 44) provides that appropriate minimum wages and working conditions shall be provided by industries performing services or furnishing goods under contracts exceeding \$10,000 with the Federal Government.

(b) Child-labor provisions. Both acts define and proscribe illegal child labor. The Fair Labor Standards Act provides that the enforcement of these provisions shall be vested in the Chief of the Children's Bureau. Regulations and standards for such enforcement are determined by the Children's Bureau. Under a cooperative arrangement existing between Wage and Hour Division and the Children's Bureau, the major portion of inspectional work to determine compliance with the child-labor provisions of the Fair Labor Standards Act is performed by Wage and Hour Division inspectors. Thus duplication of inspectional personnel in this field is avoided.

(c) Wage stabilization program activities to assist the National War Labor Board. These duties are performed by personnel employed through the use of funds appropriated to and transferred by the War Labor Board to the Wage and Hour Division pursuant to section 601 of the act of June 30, 1932. The Division performs the initial servicing of requests made by industry and labor for authority to make wage and salary increases (except for increases in salary over \$5,000 which are within the jurisdiction of the Internal Revenue Bureau of the Treasury). Through its regular inspection activities it makes plant test checks for compliance with the wage stabilization policies of the Government. The Division inspectors also, upon request by the regional offices of the National War Labor Board, perform intensive investigations into alleged violations of the stabilization policy for use by the National War Labor Board in enforcing wage stabilization.

The Children's Bureau of the Department of Labor is responsible for the enforcement of the provisions of the Fair Labor Standards Act (29 U. S. C. 21), proscribing child labor and in connection therewith for the issuance of regulations governing conditions under which minors less than 18 years of age may be gainfully employed. Most of the investigations into compliance are performed by Wage and Hour Division inspectors through a cooperative arrangement between the Bureau and that Division; field representatives of the Children's Bureau generally conduct investigations into alleged violations in enterprises which are not within the jurisdiction of the Division under the general provisions of the Fair Labor Standards Act.

NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board was created by the National Labor Relations Act approved July 5, 1935 (29 U. S. C. 151). Under its authority the Board performs two major functions: (1) It adjudicates charges alleging commission of specified labor practices defined as unfair which relate to the rights of employees to self-organization for purposes of collective bargaining; (2) it investigates questions concerning representation affecting commerce, and determines and certifies representatives of employees in appropriate units.

Under section 8 of the War Labor Disputes Act approved June 25, 1943 (Public Law 89, 78th Cong.), the Board is designated as one of three Government agencies to receive official notice from the employees of war contractors that a dispute threatens continuity of war production. Thirty days thereafter, if such notice has not been withdrawn or the dispute otherwise settled, the Board conducts a strike ballot among the affected employees to determine whether or not they desire to strike.

NATIONAL WAR LABOR BOARD

The National War Labor Board's authority in the field of labor relations is derived from several Executive orders and from the War Labor Disputes Act (Public Law 89, 78th Cong.). The Board is tripartite in character, with equal representation on behalf of the public, management and labor. This organizational characteristic extends through the National Board and its subordinate instrumentalities, the regional Boards and the industry commissions and the panels which are appointed to act on specific questions or disputes.

The instrumentalities which by delegation of authority from the National War Labor Board undertake the settlement of labor disputes are the 12 regional war labor boards which blanket the country under their geographical jurisdiction, six industry commissions having authority to issue directive orders as agents of the Board, and two industry panels empowered to dispose of cases by making recommendations and reports to the Board. These subordinate agencies, each created by directive order of the National War Labor Board are the West Coast Lumber Commission, the Nonferrous Metals Commission, the Detroit Tool and Die Commission, the Trucking Commission, the Shipbuilding Commission, the Newspaper Printing and Publishing Commission, the War Shipping Panel, and the National Airframe Panel. In addition, the National War Labor has delegated to the tripartite Wage Adjustment Board in the Department of Labor jurisdiction over

labor disputes involving persons employed in the building and construction industry with power to hear and issue directive orders in such labor disputes cases. Decisions and orders of the subordinate instrumentalities and delegated agencies of the Board are subject to review by the National War Labor Board.

The function of the National War Labor Board in the field of labor relations is the settlement of wartime labor disputes which are not under the jurisdiction of the National Labor Relations Board or the procedures of the Railway Labor Act, as amended, and which have been certified to the Board by the Secretary of Labor, or under which the Board has assumed jurisdiction on its own motion. The Board's authority for settlement of labor disputes derives from Executive Order No. 9017, issued January 17, 1942, as amended, and from the War Labor Disputes Act. The Board is authorized: To conduct hearings with respect to disputes within its jurisdiction; to receive pertinent information or evidence and make findings of fact on the issues in such disputes; to issue directive orders in settlement of the issues in such disputes; to issue subpoenas to compel attendance of witnesses or production of evidence or information relating to issues in any such disputes; and to refer cases to the President of the United States for appropriate action when the Board is unable to obtain compliance with its directive orders.

The Board may request the Director of Economic Stabilization to supplement its effort to obtain compliance with its directive orders and the Director of Economic Stabilization is authorized by Executive Order 9370 to direct certain executive agencies of the Government to take restrictive actions designed to induce compliance by the party to the dispute case resisting the directive order of the Board. When the Board refers a case to the President of the United States, the Chief Executive may obtain compliance by persuading the resisting party to respect and obey the Board's order; or he may, pursuant to his wartime authorities, order that a designated department or agency of the Government take immediate possession of the plant, mine, or facility involved in the dispute for the purpose of maintaining operation and avoiding an interruption which would unduly impede or delay the war effort.

Under the War Labor Disputes Act the Board is one of the agencies with which strike notices must be filed, and the Board is the only agency authorized to change the terms and conditions of employment during the 30-day period following the filing of a strike notice, or during Government operation of any plant, mine, or facility seized under that action.

The authority of the National War Labor Board for the stabilization of wages and salaries derives from the Stabilization Act of October 2, 1942 (56 Stat. 765), and from Executive Orders Numbered: 9250, dated October 3, 1942; 9328, dated April 8, 1943; 9370, dated August 16, 1943; and 9381, dated September 25, 1943; and from directives and regulations issued by the Director of Economic Stabilization. The jurisdiction of the Board extends to the stabilization of all wages and salaries except (1) salaries over \$5,000 per year, and those of administrative, supervisory, or executive employees not covered by collective-bargaining agreements; (2) wages or salaries of agricultural workers; and (3) wages or salaries of employees subject to the Railway Labor Act, as amended.

For the purpose of carrying out this responsibility the Board utilizes its subordinate instrumentalities, the 12 regional boards, the 6 industry commissions, and the 2 industry panels; and has made certain delegation of its power to control wages to individual public, and semipublic agencies. These agencies, for each of which a limited jurisdiction has been prescribed in general orders of the National War Labor Board, are the Wage Adjustment Board (building and construction) in the Office of the Secretary of Labor; the War, Navy, Interior, Agriculture, and Commerce Departments, the Office of Price Administration (local board clerks); the Federal Reserve System; the United States Employment Service; the Tennessee Valley Authority; the National Housing Agency; the Joint Committee of Congress on Printing; the Pan American Union; the Federal Deposit Insurance Corporation; and the War Relocation Authority.

NATIONAL MEDIATION BOARD

The National Mediation Board created by the Railway Labor Act of 1926 (45 U. S. C. 151) as amended, has jurisdiction over labor disputes on the railroads, railroad-operated water carriers, and air lines.

The Board assists carriers and labor to reach agreements in collective-bargaining negotiations. In the event the parties to a dispute voluntarily submit their differences to arbitration such tribunals are established through the offices of the National Mediation Board. The Board also investigates questions concerning

representation and certifies representatives of workers for purposes of collective bargaining.

When disputes are not susceptible of settlement through mediation or voluntary arbitration, emergency boards are appointed, by the President in peacetime and by the Chairman of the National Railway Labor Panel during the war emergency, to investigate, find facts, and make recommendations for the settlement of disputes.

NATIONAL RAILWAY LABOR PANEL

The Chairman of the National Railway Labor Panel, created by Executive orders 9172 and 9299, applies the wage stabilization policies of the Government in uncontested cases of wage changes affecting employees subject to the Railway Labor Act. Emergency boards established by the Chairman of the Panel apply the wage stabilization policy as it is brought into issue in cases before them (Stabilization Extension Act of 1944, June 30, 1944, Public Law 383, 78th Cong.).

NATIONAL RAILROAD ADJUSTMENT BOARD

The Railroad Adjustment Board created in 1934 by amendment to the Railway Labor Act (45 U. S. C. 151) is composed of an equal number of representatives of the industry and of railway labor organizations. Its function is to adjudicate disputes arising out of grievances and interpretation of existing agreements.

OFFICE OF ECONOMIC STABILIZATION

The Emergency Price Control Act as amended by the act of October 2, 1942 (56 Stat. 765), directed the President to issue an order stabilizing prices, wages, and salaries affecting the cost of living insofar as practicable on the basis of levels existing on September 15, 1942. The act further established certain standards for and gives the President specific authority to enforce rules and regulations governing wage and salary increases. Pursuant to this act, the President issued Executive Order 9250 (October 3, 1942) establishing an Office of Economic Stabilization, headed by a director and advised by an economic stabilization board consisting of eight governmental members and six nongovernmental members, including two representatives each of labor, management, and farmers. This order authorized the Director to "formulate and develop a comprehensive national economic policy relating to the control of civilian purchasing power, prices, rents, wages, salaries, profits, rationing, subsidies, and all related matters—all for the purpose of preventing avoidable increases in the cost of living * * * and facilitating the prosecution of the war." In addition to vesting certain authority and responsibilities in the National War Labor Board, the order provided that the Director of Economic Stabilization shall approve all wage increases where, in the judgment of the National War Labor Board or the Price Administrator, such increases would require increases in price ceilings.

The present procedure of the Office provides that requests for wage increases, in which the employer indicates that a price adjustment will be requested if the wage increase is granted, shall be referred to the Office of Price Administration for advice as to the necessity for the price increase or the extent of the price increase. This information is made available to the Director in making his decision on the requested wage increase.

Executive Order 9328, of April 8, 1943, directing the stabilization of wages, prices, and salaries, delegated the President's authority of the October 2 act to the Director of Economic Stabilization.

Executive Order 9370 provides that the Director is authorized to issue certain directives in order to effectuate compliance with the directive orders of the National War Labor Board in cases where such directives have not been complied with. The directives may cover the withholding or withdrawing of "priorities, benefits, or privileges extended or contracts entered into" by departments and agencies of the Government. In respect to a noncomplying labor union they may direct withholding or withdrawing "any benefits, privileges, or rights accruing to it under the terms or conditions of employment in effect when possession is taken" until compliance is forthcoming. This latter class of directive is planned for issuance to any Government agency operating a mine, plant, or facility seized by the Government. Draft deferments or employment privileges or both may be withheld by the War Manpower Commission pursuant to a directive in the case of noncomplying individuals. No orders have yet been issued under this sanction.

DEPARTMENT OF AGRICULTURE—WAR FOOD ADMINISTRATION

The stabilization of agricultural wages pursuant to the act of October 2, 1942 (56 Stat. 765), an act to amend the Emergency Price Control Act, has been assigned to the War Food Administration. The purpose of the activity is to prevent wage spiraling and pirating of labor through competition between farmers for labor and the resulting loss of working time, loss of war crops, disadvantage to producers of crops not under price ceilings, and increased lay-offs. The principle of operation is twofold:

1. *Establishment of specific wage ceilings.*—In particular areas where wages for harvesting or other "spot" operations for certain crops begin to rise precipitously, wage ceilings are established after hearings are held in the pertinent locality, based, among other things, upon recommendations of local farmers and agricultural workers, and upon farm crops.

2. *Control of individual salaries under \$5,000 per annum.*—Specific approval of War Food Administrator must be secured for individual salary increases of workers earning between \$2,400 and \$5,000 per year or where a proposed increase would bring the compensation of the worker within that range.

TREASURY DEPARTMENT—BUREAU OF INTERNAL REVENUE, SALARY STABILIZATION UNIT

The Salary Stabilization Unit was created in the Bureau of Internal Revenue of the Treasury Department to administer department responsibilities under the economic stabilization program authorized by act of October 2, 1942 (56 Stat. 765). Regulations of the Economic Stabilization Director conferred on the Commissioner of Internal Revenue authority to administer the provisions of that act relating to the stabilization and limitation of all salaries in excess of \$5,000 per annum and all salaries of executive, administrative, and professional employees not represented by recognized labor organizations.

COMMITTEE ON FAIR EMPLOYMENT PRACTICE

The Committee on Fair Employment Practice is concerned with two aspects of labor relations. These are (1) in labor disputes, where discrimination due to race, creed, color, or national origin is an issue, to give counsel, advice, and assistance with respect to the elimination of such discrimination to agencies which are authorized to mediate or settle labor-relations problems, and to management and to labor; (2) to give assistance and advice to management, to labor, and to Federal agencies with respect to methods and techniques which may be utilized to effectuate integration of members of minority groups in a working force without disturbing the stability of that labor force. The agency does not attempt directly to mediate or settle labor disputes.

APPENDIX—PART II

Following are described the agencies whose functions only indirectly involve labor relations as defined for the purposes of this report.

DEPARTMENT OF STATE

The Division of Labor Relations in the Department of State is primarily concerned with foreign labor problems. The Division is concerned with domestic aspects in only two ways:

1. It watches foreign developments to see that proper consideration is given to the effect on labor in the United States.
2. It interprets the interest and policy of American labor as to effects upon foreign policy of the United States.

The Division does not attempt to guide or formulate labor policy but merely tries to keep itself informed on current developments. Its major work may be more specifically described as follows:

Analyzes and interprets all information on foreign labor matters; analyzes and advises on effects of existing and proposed foreign labor policies of this Government on labor in the United States; studies and advises on international problems of full employment, post-war plans and developments as they affect labor; attempts to present the proper interest of United States workers in connection with international agencies dealing with monetary control, investment, development, and public works; advises on foreign labor policy to be applied in occupied enemy countries and to labor provisions of the armistice and peace settlements; studies

and makes recommendation with reference to international labor standards; confers with United States labor organizations with reference to the above problems; studies the international economic programs and views of United States labor organizations; advises on policy to be followed by the United States in employing labor in foreign countries; advises United States corporations on employment policies in foreign countries; advises on international economic developments as they affect labor; maintains liaison with the International Labor Organization; studies international activities of labor organizations; studies relations of United States labor unions with foreign labor unions and organizations; advises on importation of foreign workers into the United States; studies discrimination against United States workers in foreign countries; studies and makes recommendations on migration of laborers from one foreign country to another, etc.

The Division secures its information from reports of Foreign Service officers abroad and from analysis and digest of trends as observed in this country. Representatives of the Division attend important meetings of labor organizations.

WAR MANPOWER COMMISSION

The War Manpower Commission, created by Executive Order No. 9139, dated April 18, 1942, is responsible for the effective mobilization and maximum utilization of manpower and for issuing such policy and operating directives as may be necessary thereto.

For purposes of war administration, under Executive Order No. 9247, dated September 17, 1942, the United States Employment Service was transferred to the War Manpower Commission and has been utilized as the agency's principal operating arm.

The Management-Labor Policy Committee of the War Manpower Commission, composed of representatives selected by labor, agriculture, and industrial management, advises and counsels the Chairman of War Manpower Commission in the determination of manpower policies and promotes the active cooperation of labor, agriculture, and industrial management in securing national compliance with and support of such policies. The Committee has been instrumental in establishing the basic policy of the Commission to rely upon voluntary sanctions in effectuating its programs.

Regional management-labor committees serve as consultants to the regional directors. In the local labor market areas, the Manpower Commission utilizes the services of industrial area committees composed equally of representatives of labor and management. Within the policies approved by the Chairman of the War Manpower Commission, the committees are responsible for obtaining local cooperation in effectuating the Commission's programs, including cooperation of local management and labor in solving locally any existing manpower problems, to the solution of which action by management, labor, or both would contribute; for facilitating the orderly transfer of needed workers to essential activities; and for hearing complaints of individual workers, or employers, or groups of either, concerning any act or omission by local representatives of the Manpower Commission; and recommending to the War Manpower Commission area director action thereon.

The War Manpower Commission recruits workers and performs a placement service through the United States Employment Service, the Procurement and Assignment Service for doctors, dentists, and veterinarians, and the National Roster for Scientific and Professional Personnel. It is necessary that these workers be properly trained, and the Commission develops training policy and program to indicate where and when particular types of training are needed. It operates directly some of the training programs such as Training Within Industry and Apprentice Training Service. It is also necessary to utilize properly the workers engaged in war production activities, and the War Manpower Commission is responsible for seeing that proper utilization is achieved. Labor-market data are collected, analyzed, and published regularly.

Pursuant to the September 15, 1943, directive of the Office of War Mobilization, known as the west coast manpower program, the War Manpower Commission establishes area manpower priorities committees in all tight labor-market areas. These committees, chaired by the area director of the Manpower Commission or a civilian designee, are composed of representatives of the War Production Board, the War and Navy Departments, the Aircraft Resources Control Office, the Maritime Commission, and other Federal procurement agencies whose interests require particular consideration because of special conditions. After determinations as to the relative importance of plants from the standpoint of essentiality

of product have been made by the War Production Board area production urgency committees, the area manpower priority committees establish employment ceilings for individual plants.

VETERANS' PLACEMENT SERVICE BOARD

The Veterans' Placement Service Board was created by the G. I. bill of rights (Public Law 346, 78th Cong.) to cooperate with and assist the United States Employment Service in providing maximum job opportunities for returning veterans. The Board is given the responsibility for determining all matters of policy relating to the administration of the Veterans' Employment Service of the United States Employment Service.

DEPARTMENT OF AGRICULTURE—WAR FOOD ADMINISTRATION

The War Manpower Commission, established by Executive Order 9139, April 18, 1942, on January 23, 1943 by its directive No. XVII transferred operating responsibility to the Secretary of Agriculture for recruitment and placement, transfer, and utilization of agricultural workers. On March 26, 1943, the powers, functions, and duties of the Secretary of Agriculture in the farm labor supply field were transferred by Executive Order 9322 (amended by Executive Order 9334, dated April 19, 1943) to the War Food Administrator.

The program is operated through the Office of Labor on the departmental level, the Federal Extension Service in its interstate and foreign phases, while the Extension Service handles local and intrastate phases. Services provided cover transportation, housing, feeding, medical care, and health protection when necessary. Workers are recruited in local areas, towns, and cities, and agreements are worked out with foreign governments such as Mexico, Jamaica, British India, and the Bahama Islands for the importation of workers from those countries. Conscientious objectors and prisoners of war are used to the extent that conditions and availability of such persons warrant. Migratory labor camps formerly under the jurisdiction of the Farm Security Administration are used in the program and they are supplemented to some extent by tent camps.

CIVIL SERVICE COMMISSION

The Civil Service Commission as the labor supply agency for the Federal Government is subject to the controls of the War Manpower Commission. The Commission represents the United States Employment Service in performing its recruiting functions for the Federal Government. In instances where the Commission encounters recruiting problems involving shortage occupations, it calls upon the United States Employment Service to supplement its work in the recruiting field.

SELECTIVE SERVICE SYSTEM

The influence of the Selective Service System on labor supply is brought about primarily through its work with the military establishments, the War Manpower Commission, and with representatives of industry and agriculture in working out the policies for deferment and the schedule of withdrawals from civilian activities for induction into the armed services.

In addition, the Director is responsible under section 8 (g) of the Selective Training and Service Act of 1940, as amended, for rendering aid in replacing in their former employment or in placing in new positions members of the armed services inducted under the act who have served in World War II. To this end there has been established a Veterans' Personnel Division at headquarters and there is in each local draft board a reemployment committeeman whose function is to work with placement agencies and employers to effectuate reemployment of the servicemen.

As a means of delimiting jurisdictions the Chairman of the War Manpower Commission and the Director of Selective Service have agreed that Selective Service has the primary responsibility for the replacement of veterans in their former positions, but the initial responsibility for the placement of returning veterans in new positions is delegated to the War Manpower Commission.

OFFICE OF WAR MOBILIZATION—RETRAINING AND REEMPLOYMENT ADMINISTRATION

The Retraining and Reemployment Administration was established in the Office of War Mobilization by Executive Order 9427, dated February 24, 1944. With the assistance of a policy board composed of representatives of nine Government departments and agencies, its Administrator is to exercise "general supervision and direction of the activities of all Government agencies relating to the retraining and reemployment of persons discharged or released from the armed forces or other war work, including all work directly affected by the cessation of hostilities or the recuction of the war program."

As coordinating authority the Administrator will develop programs for the training and placement of individuals released from the armed services and for handling problems connected with the release of workers from industries not readily convertible to peacetime use. The Administrator is directed by the terms of the Executive order to perform his functions after consultation with affected Government agencies and to use existing Government facilities so far as feasible.

Though it performs no direct labor supply function itself, the Retraining and Reemployment Administration has effected the establishment of a system of information service centers for veterans and war workers, with representatives of the War Manpower Commission, Selective Service System, and Veterans' Administration. The functions of the centers are primarily to advise and refer.

VETERANS' ADMINISTRATION—VOCATIONAL REHABILITATION SERVICE

Under Public Law 16, Seventy-eighth Congress, the Veterans' Administration has established a Vocational Rehabilitation Service which exercises certain placement functions as well as actual training functions. It is the responsibility of regional training officers of the Veterans' Administration to place the trainee when he is ready for employment. In this connection all community facilities for placement are utilized before resort is had to the local United States Employment Service office.

RAILROAD RETIREMENT BOARD

The Railroad Retirement Board under the Railroad Retirement Acts of 1935 and 1937 (49 Stat. 957; 50 Stat. 307), as amended, and the Carriers Taxing Act of 1937 (50 Stat. 435), as amended, and subchapter B, chapter 9 of Internal Revenue Code (53 Stat. 1), is responsible for administering a retirement system for employees of the railroad industry. The Board is also responsible under the Railroad Unemployment Insurance Act of 1938 (52 Stat. 1094), as amended, for maintaining an unemployment insurance system for employees of the railroad industry.

The Railroad Retirement Board is also authorized under the Railroad Unemployment Insurance Act of 1938 (52 Stat. 1094, sec. 12i) to maintain an employment service for railroad workers. Under the impact of total war, this service has been substantially expanded in size and scope. Whereas in normal times this service is primarily concerned with finding jobs for unemployed railroad workers, it is now concerned with supplying the total railroad need for workers.

Under War Manpower directives it performs the same services for railroads as the United States Employment Service performs for other industries. Specifically, it receives all employer orders for railroad personnel, issues statement of availability, recruits through advertising, referrals, personnel solicitation, and special contacts with such groups as students, veterans, between-season agricultural workers, etc. Particular attention has been given to the recruitment of women, a substantial number of whom have entered railroad work. Its present program includes the importation and general supervision of Mexican laborers brought into the United States for work solely on railroads. It was recently delegated by the National Housing Agency responsibility for investigating and reporting housing needs when such needs affect the retention or recruitment of railroad workers. It maintains periodic reporting from railroads of anticipated needs and surpluses of workers by classified jobs which enables it to deal with specific vacancies and to make interregional transfers when they exist by reason of variations in seasonal operation.

FEDERAL SECURITY AGENCY

The Office of Vocational Rehabilitation of the Federal Security Agency operates under the authority of Public Law 113, Seventy-eighth Congress, July 6, 1943 (57 Stat. 374), and administers provisions of Vocational Rehabilitation Act which provides for payments to States for the promotion of vocational rehabilitation and

services to individuals disabled in industry and otherwise to enable them to engage in remunerative employment.

The United States Office of Education, now a component of the Federal Security Agency, was established by an act of Congress approved March 2, 1867 (14 Stat. 434; U. S. C. 1); its vocational education activities were authorized by the Smith-Hughes Act, February 23, 1917 (39 Stat. 929; 20 U. S. C. 11-28), as amended. (Authorization for war training activities is derived from Public Law 135, 78th Cong., title II, July 12, 1943, subtitle "Education and Training Defense Workers.")

The Office administers Federal funds and Federal grants to States for the promotion and support of vocational schools and classes for instruction in agriculture, trades and industry, distributive occupations and home economics.

The Office of Education directs war production training in vocational courses below college grade for all types of skilled and semiskilled mechanical operations in war industry, and war training at college grade for engineers, chemists, physicists, production supervisors, etc. Training courses are also conducted for youths and adults in food production and conservation, mechanics, farm-machinery repair, and farm-labor training.

The Public Health Service of the Federal Security Agency has authorized State departments of public health, with Federal grants dispensed to the States under terms of title VI of the Social Security Act (42 U. S. C. 801-3; replaced by Public Law 410, 78th Cong.), to engage in industrial hygiene work, including plant inspections, and chemical, medical, and engineering surveys, and assists the States directly in such work by research and details of personnel.

The Bureau of Employment Security of the Social Security Board in the Federal Security Agency administers title III of the Social Security Act (42 U. S. C. 501-3) which provides for "grants to States for Unemployment Compensation Administration." Unemployment compensation is a system of payments for specified periods of time to unemployed workers who are eligible to receive benefits. The unemployment-compensation program operates through State systems which vary in detail but meet minimum standards established by the Federal Government (42 U. S. C. 1103; Internal Revenue Code, ch. 9C).

WAR DEPARTMENT

As a principal wartime procurement agency, the War Department has contractual relationships with its major suppliers and performs activities affecting labor to the extent that its interests are concerned. The execution of its functions involves liaison with the Government agencies charged with labor relations, regulatory or labor-supply program responsibilities.

Activities pertaining to the handling of labor problems for the War Department's suppliers and to maintenance of relations with other agencies and with organized labor occur at four principal points in the War Department's organization:

(1) With respect to labor problems related to the War Department supply program, the Under Secretary of War, his special consultants and the Commanding General of the Army Service Forces participate in the formulation of governmental policy affecting labor by representation on certain groups, pass on major questions of War Department labor policy, and supervise the entire War Department supply program, including the general integration of labor factors with procurement, production, and related objectives.

(2) The Army Service Forces, through the labor branch of its Industrial Personnel Division, exercises an Army-wide supervision over labor activities for purposes of centralizing administration in the interest of uniformity; maintains liaison with Federal labor agencies in order to inform them of War Department needs, obtaining remedial action by them and offering recommendations and assistance in the development of labor policies, procedures, and programs which affect the War Department. Internal policies, procedures, and programs to govern the execution by the War Department of its own labor responsibilities are formulated in this office.

(3) To carry out the policies, programs, and procedures developed by the labor branch, each of the seven supply services of the Army Service Forces and the Army Air Forces adapts the policies, programs, and procedures to its particular needs and supervises the application of such policies and procedures by district offices and depots located in the vicinity of the principal suppliers. Labor officers at these points advise the procurement officers with respect to labor problems arising in the procurement program and assist in remedying problems arising in

production plants. This activity involves obtaining compliance by the contractors with applicable laws, orders, and policies relating to labor; giving to the suppliers advice and assistance intended to solve labor problems, principally by enlisting the skills and machinery of the appropriate Government agencies; appraising the effect of pertinent labor factors in making determinations with respect to the procurement program; evaluating and reporting the effectiveness of existing policies and actions designed to solve labor problems affecting the procurement program; and cooperating with local offices of agencies concerned with such problems.

(4) Each of the nine service commands of the Army Service Forces is staffed with a labor branch. For their respective geographical areas, these offices coordinate the activities of the seven supply services and the Army Air Forces and provide a single local point with which other Government agencies and labor may deal without separate reference to the several supply services. This office also determines priorities within the area among requests for needed assistance from other Government agencies and provides for centralized action with respect to general labor problems in the area affecting all or several of the supply services.

The organizations with which the War Department maintains liaison or cooperative relationships include the War Labor Board, the several bureaus and divisions of the Department of Labor, the National Labor Relations Board, the War Manpower Commission, the War Production Board, the Office of Defense Transportation, the Navy, the United States Maritime Commission, the War Shipping Administration, the National Mediation Board, and the National Railroad Adjustment Board.

The utilization of prisoners of war as an element in the labor supply available to the Nation is under the control of the Provost Marshal General's Office, and relationships with the War Manpower Commission or the Department of Agriculture with respect to employment of prisoners of war are maintained.

By delegation of authority from the National War Labor Board and the Commissioner of Internal Revenue, the War Department administers the national wage and salary stabilization policies in their application to certain civilian employees of the War Department, Army Exchange Service, and Government owned, privately operated facilities of the War Department.

NAVY DEPARTMENT

The Assistant Secretary has been delegated all authority and responsibility within the Navy Department for formulating policies and establishing procedures in the handling of labor relations and labor supply problems related to the procurement of goods and supplies by contract.

While the operating bureaus of the Navy make their own contracts with suppliers, subject to the usual administrative regulations and procedures of Government agencies, each of the main procurement bureaus has within the departmental set-up a small manpower and labor relations unit. The officer in charge of this unit is responsible for bringing to the Office of the Assistant Secretary problems involving labor for policy determinations, and for liaison with other Government agencies having action programs in the field such as the War Labor Board, National Labor Relations Board, etc., as the case may dictate.

The bureaus are not represented directly by their own labor relations officers in the field. There the labor relations function is centralized for all bureaus of the Navy in the hands of the district labor relations officer who reports directly to the director, district office of civilian personnel, who in turn reports to the commandant of the district. The district labor relations officer makes all contacts at the field level with the action agencies of the Government in the labor programs.

The district officer has no power to mediate or conciliate disputes or otherwise directly enter into cases involving labor relations in the field. His function is nominally restricted to calling in the agency within whose jurisdiction the dispute lies and in persuading the parties to cooperate with the efforts of such agency to compose the dispute. The field labor relations officer notifies the departmental office of the bureau affected of any actual or threatened work stoppage. The bureau is responsible for notifying the Labor Relations Branch for advice.

Labor supply and labor relations functions in the Division of Shore Establishments and Civilian Personnel relating primarily to the affairs of suppliers are comprised in the following branches:

1. The Labor Relations Branch, which is responsible for the coordination of bureau labor relations policies in the field of Navy suppliers as well as shore establishments, and which maintains liaison with other bureaus and other agencies of the Government on specific and general labor problems as well as economic stabilization measures.

2. The Employment Branch, Industrial Manpower Section, which has mainly to do with the development of the manpower program and advice to Navy suppliers in relation thereto. In this section it is recognized that problems of the full utilization of labor by naval suppliers involves visiting plants with appropriate local officials of the War Manpower Commission.

Among the policy programs which are handled within the Labor Relations Branch with the Assistant Secretary of the Navy are problems involving appropriate contract arrangements for labor costs, including appropriate observation of Federal law and regulation as basic determinants; the actual handling of labor relations in plants seized and operated by the Navy pursuant to the President's order under section 9 of the Selective Service Act for noncompliance with the directive of the National War Labor Board; cut-backs and terminations of contracts as they affect labor relations and labor supply.

UNITED STATES MARITIME COMMISSION

As one of the principal procurement agencies of the Government the Maritime Commission operates under the authority of the Merchant Marine Act of 1936, as amended. The Division of Shipyard Labor Relations is the principal point at which are performed labor activities auxiliary to the performance of the agency's responsibility for developing the merchant fleet. To a limited degree, however, the regional directors of construction, through staffs of industrial relations advisers, carry out labor relations functions in accordance with policies, procedures, and advice developed by the Division of Shipyard Labor Relations. With respect to the Commission's supply contractors, the Division of Shipyard Labor Relations assembles data on labor conditions, wages, and contracts; studies complaints and disputes in an effort to work out satisfactory adjustments; maintains liaison with the Shipbuilding Stabilization Committee in War Production Board on matters affecting administration of the master employment agreements and zone standards and with the Shipbuilding Commission of the National War Labor Board on wage adjustments and labor disputes coming within the Board's jurisdiction. Cooperative relationships are also exercised with respect to the Department of Labor, the National Labor Relations Board, and with the Committee on Fair Employment Practice concerning labor relations matters beyond the scope of the Division of Shipyard Labor Relations. The Division controls and coordinates health, safety, and training programs in the shipyards, providing standards for the operation of such programs. Recommendations with respect to installation of adequate feeding facilities are made to the yards.

With respect to labor-supply matters the Commission utilizes the services of the War Manpower Commission and recommends to Selective Service bases for deferment of needed workers.

The responsibility of the crews' quarters committee of the Maritime Commission involves labor relations aspects insofar as determination of living quarters on board ships and of manning scale bears on the question of working conditions. In connection with the performance of this function the committee receives and acts upon suggestions made by maritime labor unions.

WAR SHIPPING ADMINISTRATION

The War Shipping Administration exercises its authority under Executive Order No. 9054, as amended by Executive Order No. 9244. Basically the authority is derived from the Merchant Marine Act of 1936 as amended.

The Administration's Division of Maritime Labor Relations is responsible for the formulation and amplification of policy in connection with collective-bargaining agreements in the maritime industry for the guidance of the Administration's agents who control operation of the merchant fleet. The Division of Maritime Labor Relations maintains files of foreign and domestic wage scales, working conditions, and collective-bargaining agreements; seeks to reconcile disputes and mediate proposed changes in agreements; and explains decisions of the Maritime War Emergency Board pertaining to war-risk compensation. The Division investigates and seeks to adjust complaints of discrimination arising under Executive Orders 8802 and 9346, which pertain to discrimination in regard to employment and maintains liaison with the Committee on Fair Employment Practice, the United States Conciliation Service, the National Labor Relations Board, and the National War Labor Board.

The Maritime War Emergency Board was constituted under a voluntary agreement entered into by the unions, the operators, and the Administrator for the purpose of developing a wartime policy for adjusting differences between the

parties with regard to questions relating to war-risk compensation or war-risk insurance.

On the Pacific coast the Maritime Industry Board, composed of representatives of industry, labor, and the War Shipping Administration, is responsible for the coordination of efforts of employer and employee groups to obtain increased efficiency in loading and unloading vessels. This is primarily an industrial engineering job but involves labor relations aspects stemming out of effective utilization of the manpower.

The Legal Division of the War Shipping Administration contains a Labor Problems Section responsible for the prosecution and adjudication of seamen's claims.

Under the Merchant Marine Act of 1936, as amended, and Executive Order No. 9054, as amended by 9244, and Executive Order No. 9198, the War Shipping Administration is responsible for recruitment and training of merchant marine personnel.

The recruitment and manning organization is responsible for the assignment of men to ships. This manning function is performed by the organization directly and through utilization of union hiring halls. Manning pools are maintained on daily wage and subsistence, and transportation of seamen from port to port, as needed, is provided. The organization prosecutes directly its program to recruit marine personnel, to augment the services of those who are enlisted through the normal private sources, by operating recruiting offices in the principal ports in the United States and by maintaining liaison with the United States Employment Service which supplements the direct recruiting program of the War Shipping Administration. The organization operates the welfare program for seamen and maintains liaison with the Selective Service System for the purpose of obtaining deferment of marine personnel.

The training organization of the War Shipping Administration administers training programs for apprentice seamen, cadets, and the upgrading of licensed and unlicensed personnel.

The Committee on Crew Disciplinary Matters formulates the Administration's policy with regard to discipline of licensed and unlicensed seamen.

WAR PRODUCTION BOARD

Labor relations and labor supply as aspects of production are the concern of several divisions of the War Production Board. In addition to the segments of the Board's organization which are available for advice with respect to the effect of production programs and policies upon labor, the Chairman has the services of a labor consultant. Attached to the Board for advisory service with respect to policy matters is also the Labor Management Council.

The Labor Production Office of the War Production Board maintains general responsibility on behalf of the War Production Board for the labor aspects of production, with the objective of increasing the productivity of workers in plants and of securing the cooperation of organized labor for increased production of war materials and essential civilian goods. In this connection, the Labor Production Office advises industry divisions of War Production Board with respect to means for obtaining increased productivity in war plants; seeks to influence the maintenance of stable labor relations in war plants; promotes the development of industrial health and safety programs in war industry and calls to the attention of the Department of Labor or the Public Health Service specific problems requiring remedial action; stimulates action on the part of war plant management to provide adequate in-plant feeding facilities and encourages action required by War Production Board and other governmental agencies for approval of construction and installation of such facilities; administers through a board of review the building trades stabilization agreement which is concerned with inter-union jurisdictional disputes; administers the shipbuilding stabilization agreement through the Shipbuilding Stabilization Committee, the purpose of which is to achieve stabilized industrial relations in the private ship construction and repair industry; through a cooperative arrangement with the United States Employment Service administers a placement service for building trades workers; seeks to enlist the support and participation of the labor movement in the Government's war production program through the medium of labor advisory committees and informational liaison with labor organizations. In performance of these duties, the Labor Production Office maintains liaison with the Department of Labor, the War Manpower Commission, and the War Labor Board.

Labor advisory committees are appointed to secure the assistance of labor in the solution of production problems and to promote maximum cooperation between the Government and labor in the formulation and execution of official

programs. The committees discuss with the respective industry divisions problems pertinent to the bureau program affecting the industry represented, furnish information and assistance including reports to Board officials, and review proposed orders and programs for the purpose of making recommendations thereon. Policies for the guidance of the committees are developed by the Office of Labor Advisory Committees, composed of representatives of the Office of Labor Production and the Office of Manpower Requirements.

The Office of Manpower Requirements has a responsibility for relating labor requirements for production of war and essential civilian goods to the available manpower supply. It seeks to bring to bear upon the determination of War Production Board production controls and programing knowledge of limitations on the availability of manpower, in order that requirements for important production programs may be provided in terms of relative urgencies. This function requires a continuing relationship with the War Manpower Commission with the objective of coordinating policies of War Production Board and War Manpower Commission so that essential manpower demands may be met.

Assistant directors for labor are included in many of the industry divisions of War Production Board. Such personnel advise the industry divisions with respect to identification and correction of labor problems affecting productivity and of manpower requirements and the difficulties involved in meeting such requirements. These labor assistants are, in fact, extensions of the Offices of Labor Production and Manpower Requirements and are responsible for liaison between those offices and the respective industry divisions.

The War Production Drive Division promotes the establishment and effective operation of labor-management production committees in war plants and conducts special activities and campaigns designed to stimulate war workers to increased production. Programs of the committees exclude the usual industrial relations functions.

The Management Consultant Division conducts studies of management practices and recommends means for increasing production through revision of such practices. This Division devotes its major attention to the development of wage incentive plans and the promotion of their acceptance by war plants.

The Office of Civilian Requirements, through its Manpower Division, assembles and analyzes manpower and labor data in relation to essential civilian industries; establishes manpower policies and procedures for the Office of Civilian Requirements and maintains liaison with the established labor and manpower agencies within War Production Board and elsewhere in the executive branch.

Labor representatives in regional and district offices perform the liaison and informational functions at the plant and community point of contact. War Production Board relationships with War Manpower Commission and the procurement agencies are particularly exercised through area-production urgency committees, which determine relative urgencies among local production establishments, and the area manpower-priority committees, which determine the pattern for distribution of available manpower.

The War Production Drive Division is also represented in regional offices for contacts with management and labor on establishment of labor-management production committees.

The management consultants promote installations of wage incentive plans to increase production and advise the regional war labor boards with respect to unit labor costs under proposed incentive plans submitted to the boards for approval under the wage stabilization policy.

Area production urgency committees have been set up in 11 class I labor market areas and a modified form of such committees has been established in approximately 40 additional class I and class II areas. Membership in such committees is practically identical with that of the area manpower priority committees. They are chairmanned by representatives of the War Production Board. The committees are responsible for determining the relative importance of plants for production and for supplies and facilities required by these plants.

SMALLER WAR PLANTS CORPORATION

Two labor consultants act as the Corporation's liaison representatives with the labor offices of the War Production Board and agencies performing specific work in the field of labor relations and manpower, including the War Labor Board, National Labor Relations Board and War Manpower Commission. The labor consultant at no time participates in the settlement of labor disputes but seeks to obtain remedial action from the appropriate agency.

The Smaller War Plants Corporation regional and district offices establish relations with principal State and local labor organizations in their region for advisory assistance. It is the responsibility of the labor consultants to acquaint fully the principal labor organization with the programs and objectives of the Corporation and, in turn, to advise the Chairman and General Manager concerning the views of these labor organizations.

FEDERAL WORKS AGENCY

A Division of Labor Relations was authorized by General Order No. 69 dated March 12, 1942. This order consolidates all activities and functions of the Agency with respect to labor relations. This activity relates almost exclusively to the contract method of construction.

The Director furnishes liaison between the Federal Works Agency and the Department of Labor and such other agencies as are charged with responsibility with respect to labor; acts for the Administrator in conferring with representatives of labor or with employers regarding labor relations; assists the Department of Labor to secure adequate data from required sources for the determination of prevailing wage rates for contracts entered into for constituent programs; exercises continuing supervision to see that these rates are observed; aids in the settlement of wage disputes that may arise; and establishes agency-wide procedures and policies in respect to this subject.

NATIONAL HOUSING AGENCY

The Labor Relations Division of the Federal Public Housing Authority collects wage data to ascertain prevailing wages of construction labor in localities where projects are to be constructed, analyzes the data, submits it to the Department of Labor for a wage determination, and advises its various regional offices of the determinations. It reviews all contract documents to determine whether they contain the authorized wage rates and required labor provisions, and requests necessary changes; conducts surveys to establish occupational classifications and to determine approved local wage rates for maintenance labor on directly operated projects where civil-service classifications are not used. By a working agreement between the two agencies, the Labor Relations Division obtains wage determinations for the conversion program of Home Owners' Loan Corporation.

The Division inspects working conditions on projects for first-aid provisions, safety appliances, etc.; spot-checks pay rolls for proper classifications and wage rates; investigates complaints of kick-backs, noncompliance, and disputes for both construction and maintenance labor, and seeks to adjust grievances, jurisdictional disputes, etc., to avoid work stoppages; prepares briefs and statements for presentation to the Department of Justice in cases where contractors are prosecuted for violations of Federal labor statutes; and prepares analyses for cases before Federal wage-fixing authorities when the wage determination is questioned. The Division negotiates with unions and employment services to supply laborers and mechanics when labor shortages threaten to cause delays in construction.

LOAN AGENCIES (COMMERCE)

The Reconstruction Finance Corporation, through its Defense Plant Corporation subsidiary, has engaged in the construction of war plants and facilities. In connection with all contracts entered into by the Corporation, general labor provisions are set forth, including compliance with all Federal statutes pertaining to fair labor practices, wage rates, etc. Within the Defense Plant Corporation a labor section has been established which checks the pay rolls of the contractors against general labor provisions set forth in the contract to determine that there has been compliance.

The Defense Plant Corporation has not itself established prevailing wage rates, but has made use of those established by the Department of Labor under the Davis-Bacon Act for laborers and mechanics and by the regional offices of the War Labor Board for maintenance employees. In the case of nonmanual labor, namely, clerks and supervisors of the contractor, payments are based upon the prevailing wage as established by the contractor. In the contractor's certification he is required not only to certify that the prevailing wage rate has been paid but also that his payments are not in violation of Executive Order 9250.

DEPARTMENT OF THE INTERIOR

The Department of the Interior maintains a special adviser on labor relations to represent the Secretary in relationships with labor organizations, to draft and recommend departmental labor policies, to counsel and assist the bureaus and offices of the Department in labor relations matters, and to maintain liaison relationships with the Department of Labor, National War Labor Board, National Labor Relations Board, and such other agencies and organizations as the Department of the Interior may have need to contact concerning labor methods.

In accordance with authority delegated by the National War Labor Board to the Secretary of the Interior, the special adviser on labor relations administers the wage-stabilization program in its application to unclassified departmental employees and in addition is responsible for relationships with the Department of Labor on matters of predetermination of prevailing wage rates on contract construction jobs.

The Coal Mines Administration in the Department of Interior, established pursuant to Executive Order No. 9393, is responsible as agent of the Government for the operation of mines in possession of the Government under authority of law. The agency was directed to do all things necessary for or incidental to the production, sale, and distribution of coal and to maintain customary working conditions in the mines for the duration of temporary Government ownership. Management of the mines is, insofar as is feasible, left in the hands of the civilian operators.

The Administration field personnel investigate labor conditions obtaining in the mines, and report disputes, controversies, and stoppages to the central office. Settlements are sought through negotiation with designated collective-bargaining representatives. This failing, the agency seeks the services of the United States Conciliation Service. In the event of strikes constituting violations of the War Labor Disputes Act, the Administration reports the facts to the Criminal Division of the Department of Justice.

The Bureau of Mines of the Department of Interior is authorized and empowered under the Coal Mine Inspection Act of 1941 (30 U. S. C. — 4f) to make necessary inspections and investigations of coal mines in order to reduce accidents and ill health among miners. The Bureau investigates causes of mine accidents and seeks means of preventing them. It instructs mine operators, miners, and officers and employees of the mineral industries in safety methods, accident prevention, and mine rescue and recovery work. It assembles information concerning the number and causes of mine accidents. The Bureau investigates atmospheric contaminants in mines and smelters, tests respiratory devices, analyzes gases, and conducts other studies as a basis for recommendations to eliminate or control objectionable or harmful conditions in the mineral industries.

PETROLEUM ADMINISTRATION FOR WAR

The performance by the Petroleum Administration for War of its responsibility for promoting maximum production of war-needed petroleum products and controlling the distribution of such products involves, as an incident thereto, the need for labor advisory services. The Assistant Deputy Administrator, therefore, has a small labor-manpower staff to assist the agency and the industry in solution of labor and manpower difficulties which threaten to impede the industry's war program. The staff meets with industry and labor organizations and seeks to enlist their cooperation and support for the Petroleum Administration for War program. The staff maintains liaison with other Federal agencies concerned with labor and manpower problems. Particular attention is given to the problem of manpower requirements of the industry, including means for reducing such requirements by more effective manpower utilization and by obtaining priorities from War Manpower Commission for the allocation of manpower in accordance with the relative urgency of the program.

OFFICE OF DEFENSE TRANSPORTATION

The Division of Transport Personnel of the Office of Defense Transportation analyzes the labor requirements of the transportation industry in relation to labor supply on the basis of statistics received by it from the Interstate Commerce Commission, the Railroad Retirement Board, and the War Manpower Commission. It consults with transport companies and the transportation industry in planning manpower programs; explores the possibility of using new sources of labor supply among which are women and handicapped workers and imported foreign labor.

It sponsors programs of labor-management cooperation to promote better utilization of transportation personnel, and works to secure modification of working rules of either employers or employees when these rules result in less than full utilization of manpower. The Division also attempts to promote the establishment and maintenance of training programs.

The field staff of the Division was established as a result of an agreement with the War Manpower Commission. Field representatives operate in the War Manpower regions to perform liaison services between the War Manpower Commission representatives, the industry, and transportation labor. They also serve to keep the Washington staff of the Office informed as to critical manpower situations in the various regions.

DEPARTMENT OF LABOR

The Bureau of Labor Statistics of the Department of Labor was created by act of June 13, 1888, "to acquire and diffuse among the people of the United States useful information on subjects connected with labor in the most general and comprehensive sense." In carrying out its responsibilities the Bureau of Labor Statistics collects, analyzes, and disseminates information relating to wages, occupational wage rates, earnings, hours of labor, extent and nature of employment, industrial injuries, absenteeism, industrial relations, strikes, occupational employment outlook, productivity of industry and labor, prices and cost of living, and distribution of civilian consumer commodities. While the data collection and analyses of the Bureau are essential to practically every Government agency having to do with the formulation of policies affecting the economy, the studies of the Bureau are also used by both labor and industry.

The Division of Labor Standards in the Department of Labor was established in 1934 as a service agency to State labor departments and State officials, and to labor, employers, and civic groups interested in the improvement of working conditions. It is authorized to develop desirable standards in industrial relations and practices, labor legislation and labor law administration. The advisory services of the Division have been expanded to include management and labor in war industries as well as Government procurement agencies during the war, in connection with the "promotion of health, safety, employment stabilization, proper working conditions, and amicable industrial relations." Assistance is given management and labor in specific plants to establish safety and health programs; and to train supervisory employees and safety representatives of unions in safety practices. The agency performs service functions entirely and cooperates with the War Manpower Commission in its labor utilization program, the War Production Board in its labor program, and with the producing and procurement agencies including Maritime Commission, War Shipping Administration, and the War and Navy Departments.

The Women's Bureau of the Department of Labor was created by an act of Congress dated June 5, 1920, for the purpose of formulating standards and policies to promote the welfare of wage-earning women, improve their working conditions, increase their efficiency and advance their opportunities for profitable employment. The Bureau was authorized to investigate and report on all matters pertaining to the welfare of women in industry. The Bureau is a service agency. The standards and policies it promulgates have been used by the States, Federal procurement agencies, industry and labor. The spread of women's employment under war conditions into jobs never before opened to them and the extent to which war industries rely upon the employment of women has rendered such research and advice essential to the end that maximum productivity can be obtained in the war effort.

OFFICE OF PRICE ADMINISTRATION

The Price Administrator has appointed a Labor Relations Adviser to provide a means for exchange of information between organized labor and the Office of Price Administration on the price, rationing, and rent-control programs. To advise with this official the Administrator has established a labor policy committee consisting of three members representing the American Federation of Labor, the Congress of Industrial Organizations, and the railway labor organizations. Labor advisory committees are likewise established in the regional and district offices of the Office of Price Administration to counsel with administrative officials in charge of such offices.

The Labor Relations Adviser is responsible for receiving complaints and suggestions from organized labor relating to Office of Price Administration policies or operations and to consider and to advise the Administrator on labor relations

generally. One of the main purposes of the labor policy committees and the Adviser is to inform and promote cooperation among labor organizations with the Government's policies on price and rationing controls.

FEDERAL COMMUNICATIONS COMMISSION

The Commission is accumulating data, through reports from the communications industry, on labor standards, wages, earnings, turn-over, productivity of labor, and occupational and employment levels in various sectors. The data are made available to the War Manpower Commission, Board of War Communications, National War Labor Board, and National Labor Relations Board for their use in appraising problems in the industry within their jurisdictions.

BOARD OF INVESTIGATION AND RESEARCH

This Board was created to make certain research studies, as the basis for recommendation to the President and the Congress, in the field of transportation, particularly with respect to carriers for railroads, motor carriers, and carriers for water. These studies are confined to relative economy and fitness of carriers; extent of public aids to such carriers; taxation imposed upon carriers; and any other matters relating to carriers which it is deemed important to investigate for the improvement of transportation conditions and to effectuate the national transportation policy embodied in the Interstate Commerce Act. Incidental to these purposes the Board is making several studies into conditions affecting transportation labor, including one on occupational hourly wage rates, another on employee welfare in railroad consolidations, and a third on Federal procedures in the settlement of labor disputes in the industry.

COORDINATOR OF INTER-AMERICAN AFFAIRS

The Department of United States Activities and Special Services of Coordinator of Inter-American Affairs includes a small Labor Relations Division which has the following program objectives: To foster closer relationships among labor groups in Latin America with labor groups in the United States and vice versa; to develop a fund of information concerning the social and labor movements of the hemisphere; to work with other Government agencies in the development of special projects pertaining to inter-American labor programs; to obtain the cooperation and participation of United States labor organizations in the training of persons from the other American republics; and to provide educational materials designed to develop in economic and labor groups an expanding interest in inter-American affairs. Insofar as international relations are concerned the approval and cooperation of the Department of State are obtained.

DEPARTMENT OF COMMERCE—BUREAU OF THE CENSUS

Executive Order 9232 dated August 20, 1942, transferred the functions of the Sample Surveys Section of the Work Projects Administration to the Bureau of the Census. The Bureau of the Census issues a regular monthly report on the labor force of the country. It provides data on the volume of employment and unemployment, characteristics of persons in the labor force and of potential workers, the number of agricultural and nonagricultural workers and on occupation, industry and hours of work.

INDUSTRY MEMBERS OF WAR LABOR BOARD CONDEMN MONTGOMERY WARD AT BOARD HEARING DECEMBER 8, 1942

After President Roosevelt's letter of November 18, 1942, directing Montgomery Ward to comply with the War Labor Board's order of November 5, and after the company's statement that it would promptly obey the President's order, the company tried to insert in its contract with the union this statement:

"The following provisions are not voluntarily agreed to by the company. In the company's opinion they are illegal and unsound. These provisions are copied verbatim from the War Labor Board's Order of November 5, 1942, and are incorporated herein on the company's part under duress, and only because the President of the United States, as Commander in Chief in time of war, has expressly ordered that they be included."

The Board on December 8, 1942, held a hearing attended by representatives of the company and the union.

In addition to comments from public members condemning the company's position, two prominent industry members of the Board made the following statements, which are in the record of the hearing:

Harry L. Derby, president of the American Cyanamid & Chemical Co. (since resigned from the Board):

"I have a statement, Mr. Chairman. I sat in this case and heard the evidence and I read the report very carefully, the report of the panel. I also introduced here—which was not denied by the company—a letter which was submitted by the union and which was purported, and not refuted, to be a letter written by the management of the company to various of its foremen and representatives in which it pointed out that steps had been taken to hinder or destroy this union.

"The reason that I voted for the imposition of a maintenance-of-membership clause in this case was that I believed that simple justice required that I do so, and if I had it to do over again, I would do the same thing.

"Now, I want to say this, that when this Board, constituted as it is on a tripartite basis, can't decide these things in the light of justice the way that we see it, without being subjected to untruthful attacks, then I say to you that this form of government is seriously jeopardized. I want to say this, that in my humble opinion, Montgomery Ward has done the greatest disservice to industry and the private enterprise system, of any concern in the United States, and I feel that just as strongly as I can.

"The ads that you put in the papers and broadcast Nation-wide were statements of untruth or half-truth, and the statement that you made this morning, that you want to comply with the order of the President of the United States because Ward is so terrifically interested in doing that in time of war, doesn't square with the attitude that is expressed here today, and, so far as I am concerned, I don't care whether Montgomery Ward thinks I represent the viewpoint of industry or not.

"When, as, and if any future companies come to this Board and the issue is as clearly drawn as it is in this case, I shall do what I believe simple justice requires, to see to it that the union is given the protection that I think it is entitled to in a case like this.

"Now, if it is the intent of Montgomery Ward to embarrass this Board and the President of the United States, that is all right. We can deal with that, and I have no doubt the President can deal with it. If that is the purpose of all this, taking up the time of this Board when we have such terrifically heavy burdens on our shoulders to carry in this time of war, if that is good citizenship, then perhaps I don't know good citizenship.

[This paragraph (handwritten) omitted in testimony:] "If, on the other hand, you want to comply, and you really want to carry out the Directive Order of the President, certainly there can be no objection to the suggestion of the Chairman, because all your rights and privileges are to yourself and you can issue any statement you care to with respect to being coerced into doing this thing, but if it is simply to prevent entering into a contract as directed by this Board and directed by the President, and these are the methods chosen to do it, then I don't think there is any necessity of our taking any great amount of time for further consideration of this case."

Roger D. Lapham, Chairman of the Board of the American-Hawaiian Steamship Company (now Mayor of San Francisco; no longer with the WLB):

"I would like to make a comment or two. As I understand, the order respecting wages which was handed down some months ago has been agreed to and the wages are in effect. The order of November directs the parties to incorporate the following provisions in a collective bargaining agreement and then specifies those provisions, four different provisions.

"Ward objected to the order but did say that they would put it into effect if the Commander in Chief so ordered and on November 18, the Commander in Chief addressed Ward's a letter in which he did direct them to carry out the provisions of the War Labor Board's order of November.

"I think the record shows that on November 21, Ward's answered the President and said they would comply with that order; in other words, they would write into the agreement the exact clauses which the War Labor Board directed them to.

"Now, Ward's says, 'We are not ready to sign that agreement,' and apparently do not intend to sign that agreement unless included in that agreement is the clause which you have read and which the Union objects to.

"Now, if Ward's intended to comply with the order of the Commander in Chief, I would like to ask Mr. Barr whether he will now comply with what Mr. Davis

directed him to do yesterday, or rather asked him to do yesterday, to include instead of your own wording which the Union objects to and which you insist, apparently, on having in. I would like to ask him whether he does not think compliance with the President's order justifies him in including this, in substituting this, which is a plain statement of fact.

"Before you answer that, I would like to call your attention to the statement which was made and which primarily, of course, is addressed toward public consumption. You speak of freedom of speech. We all have freedom of speech. Ward's has freedom of speech. Ward's uses its freedom of speech by half-truths which I, as a member representing industry—although Ward's may claim that I know nothing about it; I am not representing industry or anything else. Ward's claims I know nothing about it and casts reflections upon all the other industry members of this Board.

"Ward's has freedom of speech, and the industry members of this Board also have freedom of speech and they intend to use it to tell the truth and not a damn bunch of half-truths."

NATIONAL WAR LABOR BOARD

[For immediate release, June 30, 1942]

William H. Davis, Chairman of the National War Labor Board, today announced that the Board had decided unanimously to take jurisdiction over the dispute between Montgomery Ward & Co. and the United Retail, Wholesale and Department Store Employees of America, Congress of Industrial Organizations, involving 5,500 employees in Chicago, 5,000 of whom work in the mail-order house, 300 in a warehouse, and 200 in a retail store.

In taking jurisdiction over the dispute, the Board accepted the unanimous conclusions of the panel which heard the case, composed of Lloyd K. Garrison, dean of the University of Wisconsin Law School, public representative; William Hanscom, employee representative, and Joseph L. Miller, employer representative. The panel told the Board, in part:

"It is certain that if the Board does not take jurisdiction the threatened strike will occur, for every other avenue of settlement has been exhausted, and the company flatly refuses to submit the issues to arbitration * * *.

"Altogether the company employs some 65,000 to 70,000 workers and serves many millions of customers. What the total effects on the company's business throughout the country would be if the Chicago house and the other units were closed down, no one can say. But the history of industrial conflicts indicates that strikes against an employer in a central locality may end by involving portions of the employer's establishments elsewhere, and it seems to us that the probabilities are in favor of the spreading of strife in the company's units beyond the confines of Chicago, though how far and to what extent, no one can prophesy."

In writing the opinion for the Board, Wayne L. Morse, public member, said in part:

"It would not be difficult for the American people to fix the responsibility for such a strike in case it should occur if the Montgomery Ward Co. should force such a strike by refusing to accede to the jurisdiction of the War Labor Board. It is also unnecessary to argue the point that in such an event the American people would expect their Government to take whatever steps might be necessary to carry out the national understanding that labor disputes of the nature of the one in this case should be settled by peaceful procedures. It should be recognized by all concerned that the jurisdiction of the National War Labor Board stems from the War Powers of the President * * *.

"These are days when the Government must act in the interests of maintaining to the maximum extent possible a smooth-working war economy uninterrupted by 'industrial civil wars' within our domestic economy. We cannot win this war, at least without an unnecessary loss of men, if as a nation we permit employers and labor organizations to disrupt our war effort by strikes and lock-outs. This particular dispute involves so many employees, and would affect the life of a very important industrial center to such a degree, that there is no doubt whatever in the minds of the members of the Board that the dispute falls within the jurisdiction of the Board * * *.

"The fallacy of the position on jurisdiction taken by the Montgomery Ward & Co. before the panel of the Board seems clear if one follows it to its logical conclusion. What the position of the company amounts to in fact is that it believes it should be allowed in these times to fight out with the labor organizations in its plants its differences with those organizations over such issues as wages,

conditions of employment, union security, and arbitration machinery. It says in effect that because it has been the long-established policy of the company in peacetimes not to agree to any form of arbitration of its differences with labor unions, but to retain to itself the whole determination of all such questions within its own discretion, therefore, it intends to insist upon the same privileges and rights during wartime.

"The Board wishes to call the attention of the company to the fact that it is one thing for a long-suffering and patient public to stand by during peacetimes while American employers and labor unions settle their differences by contests of economic force in the form of lock-outs and strikes, but it is quite another thing to expect the American public or its Government, faced with the vital task of winning this war, to stand by while the Montgomery Ward Co., or any other important business concern carries on a fight with labor under the guise that it has the right to do so because the fight doesn't affect the prosecution of the war.

"We must all be willing to do a good many things that many of us undoubtedly said before this country entered into the war we would never do or agree to do. The Board appreciates the fact that prior to the war many American employers held views similar to those which have been announced by the Montgomery Ward Co. in regard to settling labor disputes with their employees. Likewise the Board appreciates the fact that many American unions prior to the war have strongly opposed some of the procedures which the Board, acting under the national industry-labor agreement and the Executive order of January 12, 1942, has followed in settling wartime labor disputes * * *.

"However, such a so-called policy of rugged individualism cannot be exercised without qualifications during wartimes. It certainly is not morally proper for an employer to take the position during wartimes that he will fight it out to the finish with labor even if he has to close down his business. In a very real sense every American business of any magnitude these days is vested with a public interest and employers, as well as unions, must expect and accept such curtailments of their freedom of action as may be necessary in the interests of the war program."

On the more general question of the extent of the Board's jurisdiction, Dean Morse's opinion states, in part:

"It is to be noted that the national understanding with the President agreed to by representatives of labor and industry covers all labor disputes. It is also to be noted that the question of determining what disputes may interrupt work which contributes to the effective prosecution of the war is left to the judgment and discretion of the War Labor Board. Such a procedure is highly to be desired because obviously the question of determining the extent to which a given labor dispute might interrupt work which contributes to the effective prosecution of the war is a question of fact. Such a question of fact can be determined best by that agency of the Government which is entrusted with the carrying out of the agreement that labor disputes shall be settled by peaceful means for the duration of the war.

"The War Labor Board appreciates the fact that the line of demarcation between so-called labor disputes which do not affect the prosecution of the war and those which do, is not a clear and definite one existing between fixed knowns. Very good arguments can be made in support of the proposition that any labor dispute no matter how minor in nature is most certain at least in some degree, to register a detrimental effect upon the war effort. There unquestionably is a general acceptance on the part of patriotic Americans, that all strikes and lock-outs in all industries to all degrees should be considered out for the duration of the war, and the differences between the disputants should be settled by the peaceful procedures of mediation, conciliation, and arbitration.

"The instant case is not the first one in which the War Labor Board has passed upon the question of its jurisdiction over a given dispute. In fact, it has ruled on the issue so many times to date that the pattern of its rulings on jurisdiction has become very clear. It is the position of the Board that the question of its jurisdiction over a given labor dispute should rest entirely upon the facts of that case. Hence, the Board has not failed in any case to make a very careful study of the nature of the business concerned, the source and destination of the goods produced or sold, the use made of the products insofar as the war effort is concerned, the influence of the dispute upon the economic area in which it arises, the effect of the dispute upon manpower problems of the Nation if a strike should occur, and the importance to the war economy of the country of maintaining a continuous operation of the business uninterrupted by a strike or a lock-out. Among the many factors considered by the Board in determining the question as to its jurisdiction in a given case, the Board invariably views the controversy

from the standpoint of its effect on civilian morale. It gives weight to the needs of war workers who may be served by the industry or business, as well as to the paramount consideration of the war needs of the country at large.

"It should also be said that the War Labor Board has taken the position that any labor dispute which may properly be adjudged a 'major dispute, that is one which in case of a strike or lock-out is bound to directly affect not only a large number of workers involved in it, but also will affect detrimentally both directly and indirectly, the daily lives of a large number of people, is one which in light of war conditions falls under the jurisdiction of the Board."

The Board, following the recommendations of the panel, appointed Walter T. Fisher, Chicago attorney, to make a wage study and to report his findings to the parties before the panel reconvenes for a hearing July 15. The hearings will be held in Chicago.

The Board's directive order was signed by Frank P. Graham and Wayne L. Morse, representing the public; George Meany and Thomas Kennedy representing labor, and Roger D. Lapham and Richard R. Deupree, representing employers. The directive order of the Board and Dean Morse's opinion are attached.

NATIONAL WAR LABOR BOARD,
June 29, 1942.

Case No. 192

In the Matter of: *Montgomery Ward & Company, Inc. (Chicago, Ill.) and United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale & Dept. Store Employees of America, Local #20, C. I. O.*

DIRECTIVE ORDER

The National War Labor Board in an Executive Meeting held on June 16, 1942, unanimously resolved:

"That in Case No. 192, Montgomery Ward and Company and United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale and Department Store Employees of America, Local 20, C. I. O., the Company be advised the Board has taken jurisdiction of the case and any objections which the Company has may be stated before the Panel at the hearing on June 22, 1942."

The resolution has been complied with and the Board has considered the Company's objections, the Union's contentions and the conclusions and recommendations of the Panel, as set forth in the Panel's unanimous interim report dated June 25, 1942.

The Board now finally determines that this dispute might interrupt work which contributes to the effective prosecution of the war and is therefore within the jurisdiction of the Board under the provisions of Paragraph 3 of the Executive Order dated January 12, 1942. The Board further finds that the war effort will be promoted by a peaceful adjustment of this dispute under the jurisdiction of the National War Labor Board. The Board, therefore, directs the parties to proceed accordingly.

The Board, pursuant to the Panel's recommendation, will appoint an investigator to study the wage question and to report to the parties before the adjourned hearing on July 13, 1942.

THOMAS KENNEDY.
ROGER D. LAPHAM.
RICHARD R. DEUPREE.

Concurring:

FRANK P. GRAHAM.
WAYNE L. MORSE.
GEORGE MEANY.

[SEAL]

NATIONAL WAR LABOR BOARD,
June 29, 1942.

Case No. 192

In the Matter of *Montgomery Ward & Company, Inc. (Chicago, Illinois)* and *United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale & Dept. Store Employees of America, Local #20, C. I. O.*

The Directive Order in this case was approved unanimously by the National War Labor Board, the following members voting: Frank P. Graham, Wayne L. Morse, George Meany, Thomas Kennedy, Roger D. Lapham, and Richard R. Deupree. Mr. Wayne L. Morse, Public Member, was designated to write the opinion for the Board.

OPINION OF THE BOARD

I. FACTS

A. Procedural Steps Leading to This Decision.

The record of this case shows that the dispute was certified to the National War Labor Board by the Secretary of Labor on June 2, 1942. When the company was informed of the certification it challenged the Board's jurisdiction over the dispute, alleging that the controversy did not fall within the premises of the President's Executive Order of January 12, 1942, said order creating the National War Labor Board.

On June 16, 1942, the Board in Executive Session unanimously resolved,

"That in Case No. 192, Montgomery Ward and Company and United Mail Order, Warehouse & Retail Employees Union of the United Retail, Wholesale & Department Store Employees of America, Local 20, C. I. O., the Company be advised the Board has taken jurisdiction of the case and any objections which the Company has may be stated before the Panel at the hearing on June 22, 1942."

On the same day, the Board informed the company by telegram that it would be given a full opportunity before the panel to elaborate its position on the jurisdictional question as well as on the merits of the dispute, and that if the question could not be settled by agreement at the panel hearing the panel would submit a report to the Board with recommendations upon all issues, including the jurisdictional question.

The Mediation Panel appointed by the Board to hear the disputants was composed of Mr. Lloyd K. Garrison, Dean of the University of Wisconsin Law School and Public Representative; Mr. William Hanscom, Employee Representative, and Mr. Joseph L. Miller, Employer Representative.

Hearings were held before the panel on June 22, 23, and 24. The transcript of record of the panel hearings makes clear that the company and the union fully presented their respective positions on the jurisdictional question and that the parties understood that the record which they made before the panel would serve as the basis for the Board's final determination of the issue as to its jurisdiction over the case. On Friday, June 26, 1942, the panel submitted a unanimous written report to the National War Labor Board, setting forth the finding that the case clearly falls within the jurisdiction of the National War Labor Board. The panel also recommended that the Board should appoint an investigator to study the wage question involved in the case and to report to the parties before the adjourned hearing on July 13, 1942.

The Board requested the members of the panel to appear at an Executive Session of the Board held on June 26, 1942, at which meeting a thorough discussion of the record made by the parties before the panel took place. As a result of a careful analysis of the record and a thorough consideration of the report of the panel, the Board by unanimous vote at its Executive Session on June 26, 1942, reached the conclusions as set forth in the Directive Order of this case.

B. Background of Dispute.

As pointed out by the panel in its report:

"The Company is engaged in the sale and distribution of merchandise through mail order houses and retail stores. It owns and operates nine mail order houses, some 650 retail stores, and over 200 mail order sales units throughout the United States. The Company's net sales have been aggregating over \$500,000,000 a year. Sales by the company's Chicago mail

order house aggregated, in the 12 months ending June 1, 1942, \$85,707,308. In the same period the sales in the company's Chicago retail store aggregated \$3,895,837."

The instant controversy involves approximately 5,500 workers, about 300 of whom work in the Schwinn Warehouse. On August 26, 1940, the union was certified by the National Labor Relations Board as exclusive bargaining agent for these employees. On February 28, 1942, the union was certified by the National Labor Relations Board as the exclusive bargaining agent for some 5,000 workers employed in the Mail Order House of the company, which is located several miles away from the Schwinn Warehouse.

The Panel Report states:

"Across the street from the Mail Order House is the Retail Store, where, on the date last mentioned, the Union was certified as the exclusive bargaining agent for some 200 employees. The union also represents, by certification on the same date, some 15 to 20 workers in the South Building, immediately adjoining the Retail Store. By letter from the company dated April 27, 1942, the union was recognized as the exclusive bargaining agency for some 40 workers in the photographic department of the South Building. By a similar letter dated May 18, 1942, the union was recognized as the exclusive bargaining agency for some 75 to 100 maintenance employees in the South Building and in the Administration Building, which houses the Retail Store.

"No agreements have been entered into between the Union and the Company with respect to any of these employees.

"Negotiations with respect to the Schwinn Warehouse began in September 1940 and continued intermittently and unsuccessfully for upwards of a year. Negotiations were resumed in March of this year looking toward an agreement covering the employees in all the different units—the Schwinn Warehouse, the Mail Order House, the Retail Store, the South Building and the Administration Building.

"Toward the end of April, a strike was threatened, and efforts at conciliation having proved fruitless, the case was certified to this Board on June 2, 1942."

C. Contentions of the Parties on the Issue as to Jurisdiction of the Board over this Dispute.

The Report of the Panel summarizes the contentions of the parties on the jurisdiction issue as follows:

"The Company contends that the Board is without jurisdiction to adjust the dispute, because the Company does not produce any war materials, has no government contracts, and does not distribute what cannot be readily obtained by purchasers elsewhere. Therefore, the Company argues, the dispute is not one 'which might interrupt work which contributes to the effective prosecution of the war' within the meaning of Section 3 of the President's Executive Order setting up the Board.

"The Union contends, first, that the company's chief mail-order customers are farmers; that the Company is engaged in selling farm equipment, machinery, and things from local stores in the farm areas; that farm mechanics serving others besides themselves rely on procuring from the Company by mail order their tools and equipment; that, in particular, the Company has supplies of wire for hay baling and binder twine which are unprocureable in ordinary retail stores; and that farmers who have purchased farm machinery from the Company can get replacement parts only from the Company, since the machinery sold by the Company's competitors differs in kind from that sold by the Company.

"The Company replies that only about 2½% of all the net sales of the Chicago Mail Order House represent farm equipment, and that, even if the Chicago House were closed by a strike, the farmers could get adequate supplies from other mail-order houses of the Company or from the Company's competitors.

"The Union's second main argument is that a strike which would close the Company's Chicago units would have grave repercussions elsewhere," which would be most certain to spread an interruption of work, thereby interfering with an effective prosecution of the war.

II. DECISION

A. Issue as to Jurisdiction.

It is the decision of the National War Labor Board that this dispute clearly falls within the terms of the President's Executive Order of January 12, 1942, which order flows from the national understanding entered into with the President by American labor and industry—"That for the duration of the war there shall be

no strikes or lockouts and that all disputes shall be settled by peaceful means and that a National War Labor Board be established for the peaceful adjustment of such disputes."

A review of the record made by the parties on the issue of jurisdiction in this case satisfies the Board that the dispute is one which in accordance with the language of Section 3 of the Executive Order, creating the Board "might interrupt work which contributes to the effective prosecution of the war."

In reaching this conclusion, the Board approves and accepts the comments and conclusions which the panel set forth in its unanimous report when it stated:

"It is certain that if the Board does not take jurisdiction the threatened strike will occur, for every other avenue of settlement has been exhausted, and the Company flatly refuses to submit the issues to arbitration. The union asserts that it has over 4,000 dues-paying members in the Chicago units, out of some 5,500 eligible workers, and that a strike would effectively close down the Chicago units. The union has locals in the company's stores or warehouses, in Brooklyn and Denver and is organizing in Albany and Baltimore. In the Detroit stores alone some 3,000 employees are represented through an election which the union won last fall.

"In these localities, although the disputes have not been formerly certified to this Board, the union says that there exists the same deadlock in negotiations over the same issues as in the Chicago dispute (although in Detroit the parties are operating under an oral agreement which, according to the union, is dependent upon the outcome of the present controversy). Moreover, the union has about 250 locals in 37 states in plants other than those of Montgomery Ward, and the union considers it likely that many of these employees would take sides against the company in localities where Montgomery Ward Stores have been established.

"Altogether, the company employs some 65,000 to 70,000 workers and serves many millions of customers. What the total effects on the company's business throughout the country would be if the Chicago House and the other units were closed down, no one can say. But the history of industrial conflicts indicates that strikes against an employer in a central locality may end by involving portions of the employer's establishments elsewhere, and it seems to us that the probabilities are in favor of the spreading of strife in the company's units beyond the confines of Chicago, though how far and to what extent, no one can prophesy.

"But the most important question is not what effect a strike in Chicago would have on the company's business there and elsewhere, but what effect it would have on industrial relations generally, and particularly on industrial relations in plants directly producing or distributing war materials. If 5,500 workers of Montgomery Ward may properly strike in Chicago for higher wages and union security—the chief issues in this dispute—it seems to us almost certain that other workers in other establishments would feel that they should have the same right, and that once a strike of the dimensions which are here threatened, against an employer as well known as Montgomery Ward, and in an area as highly industrialized as Chicago, were allowed to take place on the theory that this Board lacked authority to deal with the dispute, a fire would be started which before very long might turn into a conflagration.

"We do not think that the workers, or the general public for that matter, would grasp clearly the distinction which the company seeks to make between concerns producing or distributing war materials and those producing or distributing nonwar materials. We do not think that it would be possible as a practical matter, to have one part of industry free to indulge in strikes and lock-outs and another part bound to submit their disputes to this Board and to forego strikes and lock-outs.

"We do not suggest to the Board that every dispute, however small or isolated, concerns the national policy or properly comes under the Board's jurisdiction. Necessarily a selection must be made between those whose scope and location and probable effects are such as to threaten the public interest in the midst of war, and those which are of only incidental significance. Their selection, under the terms of the Executive Order, is normally made in the first instance by the Secretary of Labor. When a dispute is certified to this Board, it means that in the judgment of the Secretary of Labor, the dispute is one which, in the words of the Executive Order, 'might interrupt work which contributes to the effective prosecution of the war.'

"The words of the President's order ought not to be given a technical construction. The cases before this Board are not lawsuits. They are living situations charged with emotion and potentiality of conflict, and they have to be considered in all their ramifications and in the light of the history of industrial controversies and the needs of the hour. If there is any doubt in a particular

case, that doubt ought to be resolved in favor of keeping the peace, for this nation cannot prosecute a war for its survival in the midst of internal dissension and disruption.

"The Panel has unanimously concluded that if the threatened strike of the Montgomery Ward workers in Chicago were allowed to occur, its probable effects, both immediately and in the long run, on work contributing to the effective prosecution of the war would be sufficiently serious to warrant the Board's taking jurisdiction. And we, therefore, recommended the entry of an order to that effect by the Board, and its transmission to the parties."

As is so clearly indicated by the Panel's Report, there can be no doubt about the fact that the Montgomery Ward and Company is one of the great and very important business organizations of America. Its sphere of commercial and industrial influence is nation-wide. Any industrial dispute which threatens continuity of its operations is bound to affect the economy of the country in many detrimental ways including injury to the convenience and interests of the consuming public.

It is a very serious matter in time of peace when great business concerns and powerful unions such as those involved in this case exercise their right to settle their industrial disputes by resorting to the use of economic force. The general public usually pays a considerable price whenever the parties resort to strikes and lock-outs. Nevertheless, it is probably true that over the years the freedom to strike and lock-out has produced more social economic gains for the country than losses. In any event it is a deep-rooted "freedom of action" in our American society, but it is one which both labor and industry as well as the great majority of citizens generally recognize must be curtailed during times of war. Thus, in time of war, it is the duty and obligation of a war government to prevent the exercise of rights and privileges which threaten to interfere with the successful prosecution of the war.

Whenever possible, it is very much to be desired that the disputants themselves should reach a mutual agreement as to the manner and extent to which their peacetime rights should be modified during a war period. Thus, as history will undoubtedly record, great credit is due American industry and labor for the agreement entered into with the President that all labor disputes shall be settled by peaceful means for the duration of the war. To that end the National War Labor Board was created and given final jurisdiction over disputes which might interrupt work which contributes to the effective prosecution of the war.

It is to be noted that the national understanding with the President agreed to by representatives of labor and industry covers all labor disputes. It is also to be noted that the question of determining what disputes may interrupt work which contributes to the effective prosecution of the war is left to the judgment and discretion of the War Labor Board. Such a procedure is highly to be desired because obviously the question of determining the extent to which a given labor dispute might interrupt work which contributes to the effective prosecution of the war is a question of fact. Such a question of fact can be determined best by that agency of the government which is entrusted with the carrying out of the agreement that labor disputes shall be settled by peaceful means for the duration of the war.

The War Labor Board appreciates the fact that the line of demarcation between so-called labor disputes which do not affect the prosecution of the war and those which do, is not a clear and definite one existing between fixed knowns. Very good arguments can be made in support of the proposition that any labor dispute, no matter how minor in nature, is most certain, at least in some degree, to register a detrimental effect upon the war effort. There unquestionably is a general acceptance on the part of patriotic Americans, that all strikes and lock-outs in all industries to all degrees should be considered out for the duration of the war, and the differences between the disputants should be settled by the peaceful procedures of mediation, conciliation, and arbitration.

The instant case is not the first one in which the War Labor Board has passed upon the question of its jurisdiction over a given dispute. In fact, it has ruled on the issue so many times to date that the pattern of its rulings on jurisdiction has become very clear. It is the position of the Board that the question of its jurisdiction over a given labor dispute should rest entirely upon the facts of that case. Hence the Board has not failed in any case to make a very careful study of the nature of the business concerned, the source and destination of the goods produced or sold, the use made of the products insofar as the war effort is concerned, the influence of the dispute upon the economic area in which it arises, the effect of the dispute upon manpower problems of the nation if a strike should occur, and the importance to the war economy of the country of maintaining a continuous operation of the business uninterrupted by a strike or a lock-out. Among the

many factors considered by the Board in determining the question as to its jurisdiction in a given case, the Board invariably views the controversy from the standpoint of its effect on civilian morale. It gives weight to the needs of war workers who may be served by the industry or business, as well as to the paramount consideration of the war needs of the country at large.

It should also be said that the War Labor Board has taken the position that any labor dispute which may properly be adjudged a "major dispute," that is, one which in case of a strike or lock-out is bound to directly affect not only a large number of workers involved in it, but also will affect detrimentally, both directly and indirectly, the daily lives of a large number of people, is one which in light of war conditions falls under the jurisdiction of the Board.

The decisions of the Board show its position that the question as to what disputes do or do not "interrupt work which contributes to the effective prosecution of the war" is not one which can be determined by the application of some hard and fast rule. The cases differ one from another in many respects, and, hence, the problem becomes one of balancing interests and passing judgment upon degrees of effects which the various disputes have upon the war effort.

In case No. 21, involving a dispute between the Hotel Employers Association of San Francisco, California, and the Hotel Unions, the question of jurisdiction of the Board was raised. In taking jurisdiction of that case the Board stated in a release to the public:

"The Board assumes jurisdiction of the strike on condition that the picket lines be withdrawn because in the opinion of the Board the significance of this particular case justifies the use of the Board's good offices in finally determining the dispute.

The potentialities inherent in this particular dispute, the effects of the dispute upon civilian morale in a war port, and the desirability in the interests of the public of settling the dispute in accordance with the national agreement that there shall be no strikes or lock-outs, are the controlling reasons for the Board's taking jurisdiction of the case."

In Case No. 16, in the matter of the Federated Fishing Boats of New England and New York, Inc., and the Atlantic Fishermen's Union, the Board took jurisdiction over a dispute arising out of the failure of the parties to agree as to who should pay for the cost of an insurance policy for the fishermen while engaged in commercial fishing. In taking jurisdiction of the case, the Board recognized the importance of continuing the fishing operations uninterrupted by a strike or lock-out because of the importance of fish as a food and as a source for certain vitamins and drugs. In its decision on the case at the time its jurisdiction was challenged, the Board stated in part:

"* * * The government and the people of America have the right to expect all employers and all labor organizations to cooperate fully with the national understanding which was entered into by labor and employer representatives at the recent Presidential conference in which it was agreed that labor disputes for the duration of the war would be settled by peaceful means under the jurisdiction, if necessary, of the National War Labor Board rather than by resort to economic force. * * *

"* * * This country is at war, and the events in that war to date make clear that we cannot condone the conduct of any employer or labor group in America that places its selfish welfare above the interest of the country. * * *

In Case No. 48, involving a controversy between the Toledo, Peoria and Western Railroad Company and certain Railroad Brotherhoods, the Company challenged the jurisdiction of the War Labor Board and refused to abide by a decision of the Board to arbitrate its dispute with the Brotherhoods. As a result of its continued defiance, it became necessary for the Government to seize and operate the railroad.

In passing upon the question as to its jurisdiction in the case, the Board decided that although the railroad was only a small one of a little more than 200 miles in length, nevertheless, a maximum use of its facilities was essential to the successful prosecution of the war, and the then existing labor dispute was preventing a maximum use of the transportation facilities of the road. The Board pointed out that under the facts and circumstances of the case, such a private quarrel between the Company and the Union could not be allowed to continue in the midst of a total war between the Axis Powers and the United Nations, involving the future of the United States and the future of freedom in the world.

The Board said: "No labor union, no corporation, no special or private interest whatsoever, can be allowed by the Government of the people to break down a national agreement of business and labor sponsored by the Government for the peaceful settlement of labor disputes."

In Case No. 35 in the matter of the Inland Steel Company and the Steel Workers Organizing Committee, the Board ruled on its jurisdiction in the following language:

"In Case No. 35, Inland Steel Company and the Steel Workers Organizing Committee, C. I. O., under the Executive Order, this Board has jurisdiction to consider all labor disputes which might interrupt work which contributes to the effective prosecution of the war, including labor disputes as to union status such as the one raised in the particular case."

By this decision in the Steel case the Board made clear that it would take jurisdiction over so-called union security or union status issues which are also involved in the instant case.

In Case No. 91, the Board took jurisdiction over a dispute which arose in New Orleans between the New Orleans Laundrymen's Club and certain unions. Although there was some showing in the case that the laundries served members of the armed forces camped in that area, the War Labor Board rested its jurisdiction primarily upon the ramifying effects which a strike of a large number of laundry employees in New Orleans would have upon the economic life of that area. It recognized the civilian population would be greatly inconvenienced by laundries shut down with resulting negative effects on morale. There would follow an attempt to employ other workers in order to break the strike with the danger that the whole affair might very well develop into a very serious situation inimical to the war effort.

In Case No. 7, involving a dispute between the Pacific Fruit and Produce Company and the Fruit and Vegetable Packers and Warehousemen's Union, the Board took jurisdiction because in its opinion the controversy not only endangered the preservation of quantities of perishable fruit needed by the consuming public, but the record showed that the dispute had spread its influence to many communities in the country with the result that boycotts were interfering with the movement of truckloads and cars of apples.

The afore-mentioned cases are only a few which illustrate the Board's position upon this problem, of jurisdiction. It is a problem which cannot be resolved by resorting to strained legalistic or tortured interpretations of the language of the President's Executive Order of January 12, 1942. There is no room for doubt in the minds of reasonable men as to what the leaders of American industry and labor intended when they entered into the understanding with the President that labor disputes should be settled by peaceful means for the duration of the war. The problem of resolving the question of jurisdiction over any case which comes before the Board necessitates by its very nature a common-sense approach on the part of the War Labor Board to the end of satisfying itself by clear evidence as to whether or not the given dispute falls within the spirit and meaning of the language of the Executive Order of January 12, 1942.

These are days when the Government must act in the interests of maintaining to the maximum extent possible a smooth-working war economy uninterrupted by "industrial civil wars" within our domestic economy. We cannot win this war, at least without an unnecessary loss of men, if as a nation we permit employers and labor organizations to disrupt our war effort by strikes and lock-outs. This particular dispute involves so many employees, and would affect the life of a very important industrial center to such a degree, that there is no doubt whatever in the minds of the members of the Board that the dispute falls within the jurisdiction of the Board.

The fallacy of the position on jurisdiction taken by the Montgomery Ward Company before the Panel of the Board seems clear if one follows it to its logical conclusion. What the position of the Company amounts to in fact is that it believes it should be allowed in these times to fight out with the labor organizations in its plants its differences with those organizations over such issues as wages, conditions of employment, union security, and arbitration machinery. It says in effect that because it has been the long-established policy of the Company in peacetimes not to agree to any form of arbitration of its differences with labor unions, but to retain to itself the whole determination of all such questions within its own discretion, therefore it intends to insist upon the same privileges and rights during wartime.

The Board wishes to call the attention of the Company to the fact that it is one thing for a long-suffering and patient public to stand by during peacetimes while American employers and labor unions settle their differences by contests of economic force in the form of lock-outs and strikes, but it is quite another thing to expect the American public or its government, faced with the vital task of winning this war, to stand by while the Montgomery Ward Company, or any other important business concern carries on a fight with labor under the guise that it has the right to do so because the fight doesn't affect the prosecution of the war.

It requires little argument to satisfy the great body of American citizens that any labor dispute which is likely to result in several thousand employees going out on strike in such a vital industrial center as Chicago is a dispute which is bound to affect the prosecution of the war in a multitude of ways as was so clearly pointed out by the report of the Panel in this case. Likewise it would not be difficult for the American people to fix the responsibility for such a strike in case it should occur if the Montgomery Ward Company should force such a strike by refusing to accede to the jurisdiction of the War Labor Board. It is also unnecessary to argue the point that in such an event the American people would expect their government to take whatever steps might be necessary to carry out the national understanding that labor disputes of the nature of the one in this case should be settled by peaceful procedures. It should be recognized by all concerned that the jurisdiction of the National War Labor Board stems from the War Powers of the President.

The National War Labor Board is very conscious of the great trust imposed upon it and of its obligation to do all in its power to secure the willing cooperation of the parties involved in the disputes that come before it. It urges the parties to remember that in this war the interests of all groups within our country—labor, farmers, employers, professional people, government officials; yes, all American citizens without exception—are mutual interests inseparable and inextricably entwined one with another.

We must all be willing to do a good many things that many of us undoubtedly said before this country entered into the war we would never do or agree to do. The Board appreciates the fact that prior to the war many American employers held views similar to those which have been announced by the Montgomery Ward Company in regard to settling labor disputes with their employees. Likewise, the Board appreciates the fact that many American unions prior to the War have strongly opposed some of the procedures which the Board, acting under the national industry-labor agreement and the Executive Order of January 12, 1942, has followed in settling wartime labor disputes. The Board does not question the right of American employers and unions during times of peace to take a stand in defense of some principle of industrial relations which they consider fundamental and to fight for that principle even though it may result in great costs to the industry or to the union. The right to follow such a course of economic action constitutes one of the freedoms of our democratic form of government. However, such freedom of action has now been voluntarily surrendered because its exercise during a time of war would threaten the existence of the very democratic society with the freedoms which the war is fought to protect.

During times of peace an employer is free to say in this fight with the Union, "I prefer to close out my business—yes, lose every dollar I have in it—rather than to yield to what I think is an unreasonable demand on the part of this union." There are many examples of industrial struggles in this country during recent years in which American employers have said just about that with varying results. In some instances employers who have taken such an uncompromising position have won their fights with labor at least for a time but with varying costs. In other instances they have paid the penalty of financial ruin for defending what they considered to be a "fundamental principle." The spirit of "rugged individualism" shown by many of the leaders of American industry in their clashes with labor, especially during the past twenty years, has won the respect of many people. At least this has been true when the public has been satisfied that the employer tactics have been fair and free of abuses. Americans by and large enjoy a controversy. A "good industrial fight" put on by a hard-hitting individualist, be he employer or union leader, has been tolerated if not approved, by the public on the ground that such struggles are a part of our system of free enterprise and rugged individualism.

However, such a so-called policy of "rugged individualism" cannot be exercised without qualifications during wartimes. It certainly is not morally proper for an employer to take the position during wartimes that he will fight it out to the finish with labor even if he has to close down his business. In a very real sense every American business of any magnitude these days is vested with a public

interest and employers, as well as unions, must expect and accept such curtailments of their freedom of action as may be necessary in the interests of the war program.

Thus, in this case the United States Government cannot permit the Montgomery Ward Company to follow a course of complete independence of action in settling this dispute. It cannot permit the Montgomery Ward Company to decide for itself as to whether or not this dispute or its business affects the prosecution of the war.

Let it be understood that the War Labor Board does not charge or mean to imply in this decision that the Montgomery Ward Company has failed in any way to date to cooperate with the Board in settling this dispute in accordance with the terms of the Executive Order of January 12, 1942. It certainly had the right to raise the issue of jurisdiction for final determination by the Board. Now that the Board has decided that issue by determining that it has jurisdiction of the dispute, it assumes and takes for granted that the Montgomery Ward Company will cooperate with the United States Government through the National War Labor Board to the end of settling this dispute by peaceful procedures at a very early date.

B. Issue as to Wages.

It is the decision of the War Labor Board that the procedure recommended by the Panel in its unanimous report for a further consideration of the wage issue should be approved. The Panel states:

"At the hearing on June 24th the parties agreed that, if the Board ruled that it had jurisdiction, an adjourned hearing would be held before the Panel in Chicago on July 13th and that in the meantime an investigator should be appointed by the Board to study the whole wage question and to report his findings to the parties before the July 13th hearing for consideration thereof. It was further agreed that at such hearing each party would be free to offer additional evidence or argument with respect to the wage issue or any of the other issues in the case.

"This agreement was made by the Company with the understanding that the position it had taken regarding the Board's jurisdiction was not thereby waived. Both the Company and the Union offered to cooperate with the investigator if one were appointed, and to assist him in obtaining the necessary information.

"The Panel recommends that, if the question of the Board's jurisdiction is decided in the affirmative, an investigator should be appointed to study and report on the wage issue as described above."

In light of the foregoing recommendation of the Panel that a wage study should be prepared by an investigator of the Board to be submitted to the parties for consideration by them at a further hearing of the Panel to be held on July 13, 1942, the National War Labor Board has of this date appointed such an investigator under instructions to proceed forthwith to conduct such a wage study.

Decision by:

WAYNE L. MORSE.

NATIONAL WAR LABOR BOARD

[For immediate release, August 1, 1942.]

The National War Labor Board today unanimously ordered a maintenance of membership clause to be included in the contract between the S. A. Woods Machine Co., South Boston, Mass., and the United Electrical, Radio and Machine Workers of America, C. I. O. A total of 650 employees are involved.

The Board's directive order also provides for arbitration of all disputes under the terms of the contract and for arbitration of all disputes arising out of changes in manufacturing methods.

In writing the opinion for the Board, William H. Davis, Chairman, pointed out that the union had demanded a union shop and the company had insisted on an open shop. The Board, however, ordered a maintenance of membership clause, which requires all employees who are members of the union at the time the clause becomes effective to remain members for the duration of the contract. It also requires any members who later join the union to maintain their membership.

The clause provides a period of 15 days during which any member of the union can withdraw from the union in order not to be bound by the clause. It also includes a provision designed to protect individual workers from being coerced into membership in the union.

In his opinion, Mr. Davis pointed out that the employers had expressed the view that unions should not be granted maintenance of membership clauses unless they were responsible and democratically operated. The public members of the Board, he said, agreed with the employer members on this point completely. He explained that the Board had satisfied itself in this case that the union was "responsible and was operated under a constitution and bylaws which protected for the membership their normal democratic rights," and that the Board, as a matter of practice, requires all unions to submit their constitutions and bylaws.

He stated that the employer members had urged that the Board should also, when granting a maintenance of membership clause, require unions to file financial statements, changes of officers, and other data from time to time with the Board. Likewise, they suggested, he said, "that the Board should make certain positive requirements relating to trade unionism in general, such as forbidding unions to contribute to political campaigns." Mr. Davis concluded his opinion as follows:

"Quite apart from any opinion as to the desirability, from the standpoint of the country as a whole, of regulations of the type suggested by the employer members, it seems quite clear that any such attempt on the part of the War Labor Board to extend a continuing control by the Board over a labor union would be to indulge in the worst vice of administrative tribunals—an attempt to extend jurisdiction beyond the frame of reference under which the tribunal acts. The decisions of the Board made under its Executive Order to finally determine labor disputes should certainly be confined to provisions which establish contractual obligations between the parties to the dispute."

Roger D. Lapham wrote a special concurring opinion, which was also signed by R. F. Black, the other employer member participating in this case. This opinion, he said, explains in general terms the affirmative vote on maintenance of membership of the employer members in this case and also in the case of the Warner Automotive Parts Division, Borg-Warner Corporation.

Mr. Lapham pointed out that the Board's order does not require anyone to join the union but does require those who are members as of August 16 to remain members in good standing or be subject to discharge.

Mr. Lapham concluded that the granting of a maintenance of membership clause in the *United States Rubber Co. case*, where, he said, relations between the employer and union were excellent, "fixes a pattern applicable to all employers." The employer members of the Board were faced with the alternative of continuing to dissent on maintenance of membership "except in certain cases where circumstances have clearly justified it as a means of securing uninterrupted war production." They decided, however, he said, that "constant emphasis on disagreement could serve no useful purpose in this critical period."

"However," his opinion continued, "the employer members wish to make plain that they reserve their rights to reverse or revise their position on the question of maintenance of membership at any time and in any case coming before the Board, particularly when they think because of some special facts the public interest would not be served by granting maintenance of membership."

He asked whether the Board would not be justifiably charged with bias unless it insisted that unions "which seek concessions not required by law, assume certain simple responsibilities from which, so far, union leaders have run away?"

Mr. Lapham asked whether the Board had not assumed an obligation to union members in ordering maintenance of membership, and concluded his opinion as follows:

"Has not the Board assumed a further responsibility to Mr. John Doe, union worker when he chooses to retain his union membership? If the union becomes insolvent can the Board say that it is not concerned, despite the fact that it has ordered Mr. Doe to keep up his payments to the union?"

"We assert that the Board should be concerned with the rights of all parties affected by its order, including the union worker, Mr. John Doe. It should assume the responsibility of knowing whether the local or international union of which Mr. Doe is a member operates under a proper constitution and bylaws, whether it is financially sound and whether it pays out Mr. Doe's money for political purposes."

"Briefly, we believe that the interests of Mr. John Doe, union worker, and the interests of the public can best be served if unions, both local and international, are required to comply with certain rules, just as industry generally has been compelled to accept regulatory measure designed to prevent or correct abuses."

The directive order of the Board, Mr. Davis' opinion, the concurring opinion of the employer members and the panel recommendations are attached.

NATIONAL WAR LABOR BOARD,
August 1, 1942.

Case No. NWLB 160

In the Matter of *S. A. Woods Machine Company, South Boston, Massachusetts, and United Electrical, Radio and Machine Workers of America, C. I. O., Local No. 217*

The Directive Order in this case was unanimously approved by the National War Labor Board, the following members voting: Wayne L. Morse, Frank P. Graham, Robert F. Black, Roger D. Lapham, Martin P. Durkin, and Richard T. Frankenstein. Mr. William H. Davis, Public Member, was designated to write the following opinion for the Board.

OPINION

This case involves a dispute between the *S. A. Woods Machine Company*, of South Boston, Massachusetts, and Local 217 of the *United Electrical, Radio and Machine Workers of America, C. I. O.*

It was certified to the Board on May 16, 1942, and referred to a Panel consisting of Alexander H. Frey, representing the public, John U. Barr, representing industry, and John Green, representing labor. The Panel held hearings on May 29, 30, and 31, and thereafter filed unanimous recommendations with the Board for the disposition of the four issues which were unresolved by mediation. Three of these issues concerned relatively unimportant detail and need no discussion here.

With respect to the fourth issue, namely, that of union security, the Union had demanded a union shop and the Company had insisted on an open shop. The Panel recommended inclusion in the contract of a maintenance of membership clause with a period of fifteen days, within which any member of the Union might withdraw from the Union and take himself out of the operation of the clause. The Board unanimously approved this recommendation with the addition of a clause designed to protect individual workers from being coerced into the Union.

In the discussions before the Board of the maintenance of membership clause, certain general considerations were brought to the Board's attention which seem worthy of note. Briefly, these considerations were as follows:

1. The employer members expressed their view that the maintenance of membership clause should not be granted to a union in a particular case unless the Board was satisfied that the union was responsible and was operated according to certain well-established democratic principles under its constitution and bylaws. The public members of the Board agree with the employer members in this respect completely.

The Board in granting the maintenance of membership clause in this particular case satisfied itself that the Union was responsible and was operated under constitution and bylaws which protected for the membership their normal democratic rights. As a matter of practice, the Board requires a submission of the constitution and bylaws of the union when a dispute is certified to the Board.

2. The employer members urged that in addition to examining the particular union involved to see that it was a worthy one, the Board should likewise require as a condition to the granting of a maintenance of membership clause, an obligation on the part of the union to file from time to time with the Board financial statements, changes of officers, and so forth. Likewise, it was suggested that the Board should make certain positive requirements relating to trade unionism in general, such as forbidding unions to contribute to political campaigns and related actions.

Quite apart from any opinion as to the desirability, from the standpoint of the country as a whole, of regulations of the type suggested by the employer members, it seems quite clear that any such attempt on the part of the War Labor Board to extend a continuing control by the Board over a labor union would be to indulge in the worst vice of administrative tribunals—an attempt to extend jurisdiction beyond the frame of reference under which the tribunal acts. The decisions of the Board made under its Executive Order to finally determine labor disputes should certainly be confined to provisions which establish contractual obligations between the parties to the dispute.

[S] WILLIAM H. DAVIS, Chairman.

WASHINGTON, D. C., August 1, 1942.

NATIONAL WAR LABOR BOARD,
August 1, 1942.

Case No. 160

In the Matter of *S. A. Woods Machine Company and United Electrical, Radio and Machine Workers of America, Local 272, C. I. O.*

SPECIAL CONCURRING OPINION WITH RESPECT TO THE UNION SECURITY ISSUE

We owe it to the public and ourselves to explain our affirmative vote in this case.

The Directive Order states what now appears to be the Board's standard maintenance of membership clause. The Order makes plain that at any time within the next 15 days, or until August 16, 1942, any employee of the S. A. Woods Machine Company who is now a member of Local 272, United Electrical, Radio and Machine Workers of America, C. I. O., may withdraw or resign from that local. If he fails to withdraw or resign before August 16, 1942, he is required to remain a member in good standing of Local 272 until the expiration date of the agreement. If such withdrawal or resignation of any employee from this union is disputed then such employee must prove the validity of his withdrawal or resignation before the arbiter appointed by this Board.

We emphasize that the Directive Order does not require:

(a) Anyone not now a member of Local 272 to join that local in order to hold his job;

(b) Any new employee to join Local 272 in order to obtain or hold his job.

The Order does require, however, that:

(a) Anyone who is a member of Local 272 on August 16, must remain a member in good standing or be subject to discharge.

(b) Anyone who joins Local 272 after August 16, 1942, must remain a member in good standing or be subject to discharge.

The Directive Order also provides that no coercion shall be exercised by the Union in securing members.

All these provisions or conditions lapse at the expiration of this agreement.

Recently the Board discussed a maintenance of membership clause in the *U. S. Rubber Company case* (No. 180). The Board voted 6-3, the three employer members dissenting, to impose upon the U. S. Rubber Company a maintenance of membership clause similar to the one adopted in this case.

In discussing the *U. S. Rubber Company case* the public members of this Board made plain their belief:

(a) That unionism should be strengthened and made more responsible;

(b) That the Board's policy should be to stabilize unions and that maintenance of membership was one way to do it;

(c) That maintenance of membership was a means of securing unions against deterioration and that in this period of stress labor organizations should be supported;

(d) That insofar as employers were concerned maintenance of membership should be required, regardless of whether employers are good, bad or indifferent, or are pro-labor, anti-labor or what not.

In the *U. S. Rubber Company case* it was unanimously conceded that the relations between employer and union were excellent and that there was nothing in the record of the company per se that justified or required a maintenance of membership clause. The employer members opposed disturbing the existing amicable relations between company and union, fearing an adverse effect on production. The public members, however, justified the imposition of a standard maintenance of membership clause on the four broad grounds above stated.

Presumably the granting of a maintenance of membership clause in the *U. S. Rubber Company case* fixes a pattern applicable to all employers. But it is yet to be determined if such a pattern will be applied in favor of all unions, whether they be responsible or irresponsible.

When it came to a vote on this (*S. A. Woods Machine Company*) case, in which the three members of the mediation panel had unanimously recommended a maintenance of membership clause, the employer Board members were faced with a choice of two alternatives. One was to continue to vote against granting maintenance of membership except in such cases where circumstances very clearly justified it as a means of securing uninterrupted war production. The other was to assent on the grounds that nothing constructive could be gained by continually voting no as a matter of principle.

The latter course was chosen in the belief that constant emphasis on disagreement could serve no useful purpose in this critical period.

However, the employer members wish to make plain that they reserve their rights to reverse or revise their position on the question of maintenance of membership at any time and in any case coming before the Board, particularly when they think because of some special facts the public interest would not be served by granting maintenance of membership.

If, in furtherance of its policy of developing more reliable unions, the Board continues to impose maintenance of membership (disregarding the factor of whether an employer is good, bad or indifferent) will it not be compelled to give more and more consideration to the suggestions made by the employer members in their dissenting opinions in the *Caterpillar Tractor case* (No. 63) and the *Little Steel cases* (No. 30, 31, 34 and 35)? We are more convinced than ever that the interests of the public, unions and union members demand that the Board insist that such unions who seek maintenance of membership from this Board meet certain requirements. In the *Little Steel cases* it was suggested to the public members of the Board that there be included in the directive orders granting maintenance of membership the following provisions:

"The Union, on or before the effective date of the collective agreements, shall file with the National War Labor Board a copy of its constitution and bylaws, and a list of its present officers, and shall agree that during the lives of the collective agreements:

"(a) It will file with the Board from time to time, and as promptly as circumstances will permit, notice of any changes in its constitution and bylaws, changes in official personnel of the union, or changes in its dues or initiation fees;

"(b) It will file with the Board semi-annually, a financial statement in such detail as the Board may require."

"The reports supplied under paragraphs (a) and (b) shall become public records. They shall be subject to inspection by any member of the union, by the employer who is a party to a labor dispute with said union certified to this Board, and under rules to be prescribed by the Board, by any other person, including officers or agents of the Federal Government.

"That shall also be incorporated in the collective agreements, an undertaking by the union that it will not during the life of the agreement make, assume, guarantee, repay, or participate in any contribution, subscription, pledge, or other financial obligation to any political party or candidate for public office."

If it is the Board's policy to foster the growth of more responsible unions, why should not the Board act accordingly?

If the Board grants to unions the advantage of maintenance of membership, why should it not require certain things of such unions who seek union security?

Will not the Board be charged with bias, and justifiably so, unless it acts in a less one-sided fashion?

Why should not the Board insist that those unions which seek concessions not required by law, assume certain simple responsibilities from which, so far, union leaders have run away?

Has not the Board assumed an obligation to union members in ordering maintenance of membership? Take the case of Mr. John Doe, union worker. In theory, he can withdraw from the union within the 15-day escape period. But the realist must admit that Mr. Doe, even if he really wants to, will find it difficult to resign from his union. There is an old saying, "You're in the army now." If he does not withdraw within the time allotted, the Board is obligating him to pay his dues, together with such fines and assessments as may be imposed by the union. Failure to keep up these obligations during the life of the agreement may mean the loss of his job.

Has not the Board assumed a further responsibility to Mr. John Doe, union worker, when he chooses to retain his union membership? If the union becomes insolvent can the Board say that it is not concerned, despite the fact that it has ordered Mr. Doe to keep up his payments to the union?

We assert that the Board should be concerned with the rights of all parties affected by its orders, including the union worker, Mr. John Doe. It should assume the responsibility of knowing whether the local or international union of which Mr. Doe is a member operates under a proper constitution and bylaws, whether it is financially sound and whether it pays out Mr. Doe's money for political purposes.

Briefly, we believe that the interests of Mr. John Doe, union worker, and the interests of the public can best be served if unions, both local and international, are required to comply with certain rules, just as industry generally has been compelled to accept regulatory measures designed to prevent or correct abuses.

ROGER D. LAPHAM.
R. F. BLACK.

NOTE.—The views set forth in this opinion explain in general terms the affirmative vote for the three voting employer members with respect to the maintenance of membership clause ordered today in the Warner Automotive Parts Division, Borg Warner Corporation (Case No. 135).

NATIONAL WAR LABOR BOARD,
July 3, 1942.

Case No. 160

In the Matter of *S. A. Woods Machine Co. and Local 272, United Electrical Radio Machine Workers of America (C. I. O.)*

RECOMMENDATIONS

The members of the Panel unanimously make the following recommendations for the disposition of the issues in this case:

1. *Union Security.*

The new contract shall include the following maintenance of membership provisions:

"All employees whom the Union represents for purposes of collective bargaining who, 15 days after the date of the Directive Order of the National War Labor Board in this case, are members of the Union in good standing in accordance with the constitution and by-laws of the Union, and those employees who may thereafter become members shall, as a condition of employment, remain members of the Union in good standing during the life of the agreement.

"The Union shall promptly furnish to the National War Labor Board a notarized list of members in good standing 15 days after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the Union prior to that date, the assertion or dispute shall be adjudicated by an arbitrator appointed by the National War Labor Board whose decision shall be final and binding upon the Union and the employee."

2. *Arbitration of other than Discharge Cases.*

The new contract shall include the following arbitration provision:

"From and after the date of the Directive Order of the National War Labor Board in this case all disputes, differences, and grievances between the parties arising under the terms of this agreement, but not including any desired or proposed changes in the terms of this agreement, that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall, upon written notification by either party to the other, promptly be submitted to arbitration by a Board of Arbitrators. The Board of Arbitration shall include one member designated by the Union and one member designated by the employer; these designations shall be made within 24 hours after the receipt of the aforesaid notification. These two members of the Board of Arbitration shall attempt to agree upon a third arbitrator who shall serve as Chairman of the Board. Upon their failure to agree within 24 hours from the time of their designation, the Conciliation Service of the United States Department of Labor shall forthwith be requested to designate the third member who shall serve as Chairman of the Board. At the conclusion of the arbitration proceeding the Chairman, after consultation with the other members of the Board, shall render a decision and his decision shall be final and binding upon both parties. The expenses incident to the arbitrator shall be borne equally by the Union and the Company."

3. *Changes in Standards.*

The following provision is to be included in the new contract:

"From and after the date of the Directive Order of the National War Labor Board in this case, disputes, differences, or grievances arising with respect to changes in standards resulting from changes in materials or manufacturing methods or from the establishment of a new product or the introduction of a new

type of machinery that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall be settled in the following manner:

The controversy shall be submitted to a Board of Arbitration in accordance with the arbitration procedure herein set forth, but the Chairman of the Board shall be authorized to determine merely whether or not the standard or standards in the controversy shall be subject to redetermination. If he decides that such standard or standards shall be redetermined, the matter of redetermination shall be promptly submitted by him to a committee of three qualified engineers, one to be designated by the Company, one by the Union and one by the United States Department of Labor. A decision by a majority of the members of this committee shall be final and binding upon the Union and the Company. Any expenses incident to the appointment of the Chairman of the Board of Arbitration or of the member of the committee of engineers designated by the United States Department of Labor shall be borne equally by the Union and by the Company."

4. *Retroactivity of Promotion of Inspectors to May 5.*

The provisions relative to promotion, heretofore agreed to by the Company and the Union, shall be applicable to all the employees covered thereby, including inspectors, as of June 29, 1942.

It is the unanimous decision of the Panel in the above entitled matter that the issues should be settled in accordance with the foregoing recommendations:

ALEXANDER H. FREY, *Representing Public.*
JOHN U. BARR, *Representing Industry.*
JOHN GREEN, *Representing Labor.*

REPORT

STATEMENT

1. *History of the Case.*

Following unsuccessful efforts by the parties and by a Federal Conciliator to adjust the issues in controversy, this case was certified to the National War Labor Board on May 16, 1942. On May 29, 30, and 31, written statements of position having been received from both parties, hearings were held in Washington before Alexander H. Frey sitting as mediator, and on June 4, 5, and 6 the hearings were resumed in Boston before the same mediator. Upon their conclusion the parties agreed to submit the six remaining issues to a fact-finding panel.

On July 2, 1942, the Panel, consisting of Alexander H. Frey representing the public, John U. Barr representing industry, and John Green representing labor, met in Washington to hear oral argument. Prior to the argument the issues were further reduced from six to four and one of these was practically eliminated. Argument was finally heard on union security (not including check-off), changes in standards, arbitration of matters other than discharges, and effective date of the clause relating to promotion of inspectors.

It was understood that the Panel, after hearing the argument, would prepare recommendations on the issues in dispute and submit them to the full Board for final determination.

2. *Parties to the Dispute.*

S. A. Woods Machine Co. (hereinafter called the company), a Massachusetts Corporation, has two plants at South Boston, Mass. The business was organized in 1844 and in normal times manufactures woodworking machinery and induction motors.

Local 272 of the United Electrical Radio and Machine Workers of America (hereinafter called the Union) is an industrial-type union affiliated with the Congress of Industrial Organizations and admitting to membership production and maintenance workers and inspectors in the Shell Department of S. A. Woods Machine Co. The Union on May 5, 1941, was certified by the National Labor Relations Board as the exclusive bargaining agent for the production and maintenance employees and inspectors in the Shell Department.

On May 15th of the same year the Union and the Company entered into an agreement for the above-mentioned employees. This contract provided for exclusive recognition and voluntary check-off as well as a ten cent increase in base rates, and further provided that the agreement was subject to automatic renewal from year to year unless written notice of termination was given thirty days before

expiration date. Within the time provided notice was duly given by the Union of its desire to renegotiate and amend certain of the terms and provisions of the agreement. The parties not having been able to reach a voluntary agreement on all matters and a study possibility being imminent the Conciliation Service was called in. After failure to settle the issues, the matter was certified to the National War Labor Board.

ISSUES IN DISPUTE

1. *Union Security (Not Including Check-off).*

(a) *Statement of the Issue.*—The Union has requested that the following clause be inserted in the contract to be signed by the parties:

"The employer agrees to keep in its employ only members of the Union in good standing. In the event new help is required the Union shall be called upon to supply the required help. If the Union is unable to furnish such help before 4 P. M. of the following day, the employer may secure the help from outside sources, provided that such help shall

"(a) make application at Union Headquarters for membership within 24 hours after starting work and

"(b) shall join the Union within one week in accordance with the bylaws of the Union."

The Company refuses to include this provision in the contract under negotiation. This issue does not include the question of check-off because the parties agreed in the mediation which preceded the Panel hearing to continue the 1941 arrangement of a voluntary check-off irrevocable for the duration of the contract.

(b) *Position of the Union.*—Counsel for the Union contends that there cannot be adequate union security without a union shop. In support of this demand the following arguments were advanced:

(1) Only through the union shop can labor organizations discipline their members and carry out their pledge to the President that for the duration of the national emergency there will be no strikes. Once unions acquire sufficient organization to keep the men in line, the sporadic outbreaks of outlaw strikes which occur even today will be out of the question.

(2) Maximum production is only possible through one hundred percent organizations of the shop so that such groups as War Production Councils can function most efficiently and cooperatively with management.

(3) Only through the union shop can the employer's antiunion campaign, with its ruinous effect on morale, be offset, and the Union rendered sufficiently secure so that it can concentrate on production rather than worry over loss of strength. Counsel charged as evidence of the antiunion campaign:

(a) Arbitrary dismissal (though the majority were subsequently reinstated) out of a total of 52 discharged, of 49 union members including quite a few shop stewards and union officers;

(b) Hiring of antiunion men and putting them into jobs over old well-qualified employees, as well as reinstatement of discharged men who were discovered to be nonunion in their sympathies;

(c) Derogatory remarks by Mr. Dodge, the Company President, against the War Production Council;

(d) A charge of sabotage against the local's President which was not followed up with a report to the military authorities.

Counsel further argued that the effectiveness of this campaign is shown by a drop in union membership from 96% in March to 77% in May of this year.

(c) *Position of the Company.*—The Company's answer can be summarized as follows:

(1) The Union's demand for a union shop has no place in these proceedings because of the statement by President Roosevelt to the effect that no governmental agency would impose upon employees membership in a labor union as a condition of employment.

(2) If the charges made by the Union such as discriminatory hiring and firing are true, the Company would be violating the law. Neither the courts nor the National Labor Relations Board are slow to punish such infractions. A union shop is unnecessary therefore to render the Union secure from the Company's alleged illegal activity.

(3) The alleged antiunion campaign is mythical. Morale in the shop has degenerated but this came about only after production began on the S. A. P. (semi armor piercing) shot in November 1941. From December 1941 until April 1942 when time studies were completed, this work was compensated on a system

of guaranteed bonuses which resulted in the men being overpaid. As a consequence starting as early as January 1942 there developed an inordinate degree of absenteeism. Then in March when time studies were being made to determine standard rate, a pronounced slowdown manifested itself. In other words the bad morale came about not as a result of antiunion campaign but because the men reacted adversely to the new productive setup.

(4) Answering the Union charges: Of 52 discharges alleged, 42 are admitted but of those discharged only 32 had signed voluntary checkoff cards and were known to the Company to be union members. Three specific discharges alleged to be discriminatory were justified on grounds of incompetency or insubordination. With regard to discriminatory hiring, the Company's figures although somewhat confused and not brought up to date indicate that during the month of January 1942 eighteen out of thirty-six new employees signed the check-off cards. The sabotage charge against the Local's President was reported by letters to the F. B. I., War Department, and N. L. R. B. (These letters were introduced in evidence.) Any statements by the Company President were not directed against the union, but against the war production counsel.

(d) *Union Rebuttal.*—The Union offered the following evidence by way of rebuttal:

(1) While the absenteeism of last winter in S. A. P. production may have been the fault of the men, the condition since April 20 (when the new rates went into effect) is caused by the men being so underpaid that they have to seek other jobs at higher wages, and because the work on the S. A. P. line is more exhausting.

(2) The "slowdown" in S. A. P. production if it exists at all reflects only the arduous character of the work, which involves lifting a weight practically twice as heavy as that involved in the other branches of the Shell Department.

(3) If the Company during the month of January admittedly hired thirty-six men and only fifty percent of them have signed voluntary checkoff cards, the discrimination has been substantiated. At this time (January) over eighty percent of the old employees had signed the check-off cards. Further discrimination appears from an examination of the remainder of the records introduced by the Company. These records reveal that since February of this year 105 men have been hired and remained in the Company's employ, but the Company has no check-off cards for any of them. Furthermore, the management in hiring new men significantly neglected to avail itself of a list of applicants on file with the Company.

(e) *Discussion.*—The Company has argued that the President by his statement on the closed shop issue has formulated a policy which precludes this panel as part of an agency created by Executive order from recommending any such type of union security. The Company has contended further that since the closed shop may not be imposed and since the Union has not asked for any lesser degree of union security, that the Board has no alternative but to leave the parties in status quo with respect to this issue. The Panel, however, makes recommendations on its own findings on the facts as it sees them and is by no means required to make these recommendations correspond with a demand of one of the parties.

The Panel after due consideration has reached the unanimous conclusion that additional union security is necessary for the following reasons:

(1) *Discriminatory Hiring.*—The record on this point is by no means clear, but after all the evidence has been put together the impression takes on considerable strength that certain executives of the Company sought to weaken the Union, by hiring men unsympathetic to organization. The Union Representatives, although somewhat unsure of their details, reported that one of the Superintendents had been hiring a group of men without using the company's lengthy application list. These men, with only one exception, have remained outside of the Union at a time when the plant had a 96% membership. Some of these men, it is alleged, were put into positions out of all proportion to their competency or seniority. These allegations were at no time squarely denied by the Company. In fact, the Company's own employment records give substance to the Union testimony. These records show that during the month of January 1942 at a time when 80% of the plant had signed check-off cards, only 50% of the new employees had done so. Since February, 105 men still in the employ of the Company have been hired, but the records produced by the Company indicated that none of them have signed check-off cards. Although these figures were submitted by the Company, a possibility of inaccuracy is recognized. The Panel believes that insofar as there has been any Company policy in hiring, it has definitely leaned toward recruiting men who have been unsympathetic to union membership.

(2) *Derogatory Statements by Mr. Dodge.*—The Union charged that H. C. Dodge, the Company President, had made hostile and derogatory statements about the CIO and the Local's War Production Council. Counsel for the Company apparently felt that the Union's charges had been answered when he said, " * * * I want to call your attention to the fact that the three charges made against Mr. Dodge * * * had to do not with collective bargaining, not with any grievance, not with any condition of employment, but had to do with the insistence of Mr. Mattison on the War Production Council, and when he (Mr. Dodge) said, if he did say it, it was none of the Union's damn business * * * he was referring to the War Production Council." This statement reveals better than any other the lack of cooperation which the Company has manifested to the Union. The thought behind the statement apparently is that problems involving pure bargaining but no others may be treated by the Union; that production is at all times exclusively the province of management. In the face of this noncooperative attitude, the Union must have greater security to enable it to concentrate upon output and dismiss employer hostility from its mind so long as the war lasts.

(3) *Loss of Membership.*—Whether or not Company policy brought the situation about, it is an uncontroverted fact that Union membership in the Shell Department fell off between March and May 1942 from 96% to 77%. Those were the same months in which the S. A. P. time studies and the futile renegotiation for the 1942 contract took place as well as the alleged discriminatory hiring. The conclusion seems warranted that union strength regardless of the cause is today seriously on the wane.

This Panel is unanimously of the opinion that the Union has shown itself to be a responsible organization and although the membership is at present over 80%, the Union is by no means secure. The Panel therefore recommends the following clause as appropriate for insertion in the contract between the parties.

The new contract shall include the following maintenance of membership provision:

"All employees whom the Union represents for purposes of collective bargaining who, 15 days after the date of the Directive Order of the National War Labor Board in this case, are members of the Union in good standing in accordance with the constitution and bylaws of the Union, and those employees who may thereafter become members shall, as a condition of employment, remain members of the Union in good standing during the life of the agreement."

"The Union shall promptly furnish to the National War Labor Board a notarized list of members in good standing 15 days after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the Union prior to that date, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the Union and the employee."

2. Arbitration of other than discharge cases.

(A) *Statement of the Issue.*—The contract of May 5, 1941 contained no provision whatever for arbitration.

At the negotiations for the 1942 contract the Union presented a demand that all disputes arising under the terms of the contract should be arbitrated. After mediation the Company agreed to arbitrate grievances arising from discharges but no others.

The Union in its draft contract has proposed the inclusion of the following clause:

"All disputes, differences, and grievances between the parties, under the terms of this agreement, but not including any desired or proposed change in the terms of this agreement that shall not have been satisfactorily settled under the above procedure, shall be promptly submitted to arbitration by a Board of Arbitrators. The Board of Arbitrators shall consist of one member selected by the Union and one member selected by the employer. These two members of the Board of Arbitrators shall attempt to agree upon a neutral arbitrator. Upon failure to agree within 24 hours the local representative of the United States Conciliation Service shall serve as the third member of the Arbitration Board. A decision of the majority of the Board shall be final and binding upon both parties."

The Company has made no reply or counterproposal except to indicate its unwillingness to arbitrate any matters but those involving discharges.

(b) *Position of the Union.*—The Union takes the position that the contract must provide for arbitration of all disputes arising under the terms of the agreement. Otherwise, the War Labor Board inevitably lays itself open to a barrage of cases emanating from the same plant. This is particularly true today when

labor having abandoned its right to strike tends to think of the War Labor Board as practically its sole recourse.

The Union pointed out that neither renegotiation nor matters outside the contract's terms would ever be a subject of arbitration. However, grievances arising over interpretation of language often require the machinery of arbitration as a safety valve through which excess pressure and tension can escape.

(c) *Position of the Company.*—The Company argues that a general arbitration clause will inevitably result in a union endeavor to arbitrate every problem in the shop; general arbitration is said to be unnecessary because with the exception of the questions raised by discharges and the standards of production (which will be taken up as the next issue) the problems are not of an arbitrable nature. This fact has according to the Company been borne out by its fourteen months of bargaining history.

(d) *Discussion.*—In this case the relationship between the parties has not been replete with harmony. There have been differences in the past which no Board Order or contract can dissipate in their entirety. The Company still is extremely jealous of any encroachment by the Union upon management prerogatives; whereas the Union has a conviction that the Company is determined to undermine their organization. With such a situation it is only natural that, especially in wartime, a machinery should be set up to dispose of these differences in an orderly and expeditious matter. Since this machinery has already been provided for in discharge cases, it seems eminently reasonable to apply it to all disputes arising under the terms of the contract.

While agreeing with the Union's general position on this issue, the panel recommends two changes in the clause as proposed. In the first place the selection of the "local representative of the United States Conciliation Service" is probably unwise. With this fact in mind the panel recommends a substantial incorporation of the language used by the parties in the clause covering arbitration of discharge cases. This clause provides for one employer and one employee member. It then goes on to say, "These two members of the Board of Arbitration shall attempt to agree upon a third arbitrator. Upon failure to agree within 24 hours, the Conciliation Service of the United States Department of Labor shall forthwith be requested to designate the third member." The realm of choice is thus expanded so that the parties are not required to accept a local individual.

Furthermore the Panel feels that to speak of a "majority" in an Arbitration Board that has two admittedly partisan members does not accurately describe the situation. For if the case has had to be arbitrated, the likelihood of employer and employee members agreeing on a decision is slight, the partisan members become virtual litigants before the impartial arbitrator, while the latter's become more or less that of an umpire. With such a situation a dissenting opinion is almost inevitable. On the other hand if there is only a single arbitrator he may because of inadequate comprehension of the problem reach a result that bears too little relation to what either side desires. Therefore the Panel recommends in effect a three-man board with only one voting member, the other two to act simply in an advisory and consultative capacity. Thus there can be no dissenting opinions and the Chairman will be aided in rendering a decision which meets the needs of the situation. The full recommendation is as follows:

The new contract shall include the following arbitration provision:

"From and after the date of the Directive Order of the National War Labor Board in this case all disputes, differences, and grievances between the parties arising under the terms of this agreement, but not including any desired or proposed changes in the terms of this agreement, that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall, upon written notification by either party to the other, promptly be submitted to arbitration by a Board of Arbitrators. The Board of Arbitration shall include one member designated by the Union and one member designated by the employer; these designations shall be made within 24 hours after the receipt of the aforesaid notification. These two members of the Board of Arbitration shall attempt to agree upon a third arbitrator who shall serve as Chairman of the Board. Upon their failure to agree within 24 hours from the time of their designation, the Conciliation Service of the United States Department of Labor shall forthwith be requested to designate the third member who shall serve as Chairman of the Board. At the conclusion of the arbitration proceeding the Chairman, after consultation with the other members of the Board, shall render a decision and his decision shall be final and binding upon both parties. The expenses incident to the arbitrator shall be borne equally by the Union and the Company."

3. Changes in Standards.

(a) *Statement of the Issue.*—The 1941 contract contained no provision relating to changes in the standard rates of production in the case of either: (a) A change of materials or manufacturing methods, or (b) the establishment of a new product or addition of a new type of machine. A standard rate of production is supposedly the efficiency of an average machine operator exerting an average or normal amount of effort and only when an operator exceeds such standard does he earn an incentive bonus or premium.

Counsel for the Union in his oral argument before the Panel stated the Union's demand. "We propose that in the event that no agreement is reached on changes in standards or rates, or establishing of new standards on new products, that a tripartite commission of technical engineers be set up to which the dispute is referred. This tripartite commission is to consist of one engineer selected by the Company, one by the Union and one by the Government, and that their findings shall be binding upon both parties."

The Company has persistently maintained that the problem of standards is one of engineering, and as such is exclusively the province of management.

(b) *Position of the Union.*—The Union argued:

(1) That the mere fact that the problem is a technical one should not remove it entirely from the sphere of union influence when the particular standard that may be set can exert such a drastic effect on the workers' income.

(2) That engineers designated by the Union are fully as qualified to set the standards as those hired by the Company.

(3) That a tripartite commission provides the most equitable way of treating the issue.

(c) *Position of the Company.*—The Company's counsel said that not only were these problems inappropriate for bargaining, arbitration, or any other sphere in which the Union participated, but that mutual solutions of these problems had been attempted previously without success. Consequently this policy had to be abandoned.

(d) *Discussion.*—All of the arguments in favor of general arbitration of grievances apply equally here. That the problem is an engineering one means only that the arbitrators must be professionals with technical knowledge. If anything arbitration is needed even more in the field of standard rates than elsewhere because it is precisely here that most of the ill feeling between Company and Union has developed in the past few months.

The Panel recognizes the expense and delay incident to time studies. Therefore, its recommendations provide that before the engineers are called on the scene a three-man board of lay arbitrators will first decide whether there is any prima facie necessity for a change in the standards. If that board decides in the negative, the standards remain as they are and the engineers are not summoned. The full recommendation follows:

The following provision is to be included in the new contract:

"From and after the date of the Directive Order of the National War Labor Board in this case, disputes, differences or grievances arising with respect to changes in standards resulting from changes in materials or manufacturing methods or from the establishment of a new product or the introduction of a new type of machinery that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall be settled in the following manner:

"The controversy shall be submitted to a Board of Arbitration in accordance with the arbitration procedure herein set forth, but the Chairman of the Board shall be authorized to determine merely whether or not the standard or standards in controversy shall be subject to redetermination. If he decides that such standard or standards shall be redetermined, the matter of redetermination shall be promptly submitted by him to a committee of three qualified engineers, one to be designated by the Company, one by the Union and one by the United States Department of Labor. A decision by a majority of the members of this committee shall be final and binding upon the Union and the Company. Any expenses incident to the appointment of the Chairman of the Board or Arbitration or of the member of the committee of engineers designated by the United States Department of Labor shall be borne equally by the Union and by the Company."

4. Retroactivity of Promotion by Seniority as Applied to Inspectors.

(a) *Statement of the Issue.*—In the last few days of June 1942 the Company and the Union worked out a system whereby promotions in the Shell Department were to be made in accordance with the provisions of an agreed "promotion

ladder." For this purpose the Department was divided into twenty-eight job classifications.

At the start of the Panel hearing on July 2, the Union demanded that this system be put into effect for operators, set-up men, and inspectors as of May 5th. Subsequently the Union agreed to limit this demand to inspectors only.

The Company maintained that an informal agreement had been reached with the Union organizer that the new scheme of promotions should go into effect for everyone affected as of June 29.

(b) *Position of the Union.*—The Union argued that—

(1) This issue was an important one with regard to the morale of the men.

(2) May 5 was the logical date to which the promotion provisions should be retroactive because that was the effective date of the 1941 contract.

(3) The rearrangement of inspectors unlike that of operators or set-up men did not involve any problem of training because the jobs were virtually interchangeable.

(c) *Position of the Company.*—The Company argued that—

(1) The issue was greatly exaggerated in importance because only a few men were involved.

(2) May 5 now has no more significance than any other date since the 1941 contract has already been extended to July 5, and the contract yet to be signed has various different dates of retroactivity.

(3) Rearrangement of any skilled man involves a considerable amount of training.

(4) It would be unfair to single out any particular group for benefits of this type.

(d) *Discussion.*—The hearing brought out the fact that only two men had been passed over since May 5 through promotions that were out of line, and that one of these grievances had been adjusted. The Union representatives thought that there were approximately eight more who had been hired after May 5 and given superior jobs. When questioned, however, they were unable to furnish any details.

The Panel believes that this issue presents no serious problem; that given a little time it will solve itself. The recommendation specifies that—

The provisions relative to promotion, heretofore agreed to by the Company and the Union, shall be applicable to all the employees covered thereby, including inspectors, as of June 29, 1942.

NATIONAL WAR LABOR BOARD,
August 1, 1942.

Case No. 160

In the Matter of: *S. A. Woods Machine Company and United Electrical, Radio, and Machine Workers of America, C. I. O., Local 272*

DIRECTIVE ORDER

Under the provisions of Paragraph 3 of the Executive Order of January 12, 1942, the report and recommendations of the Panel in the above-entitled case are hereby approved as amended and made the Directive Order of the National War Labor Board. A copy of the report is attached.

1. Union Security.

The union security clause shall be amended to read as follows:

"All employees who, 15 days after the date of the Directive Order of the National War Labor Board in this case are members of the Union in good standing in accordance with the constitution and bylaws of the Union, and those employees who may thereafter become members shall, during the life of the agreement, as a condition of employment, remain members of the Union in good standing.

"The Union shall promptly furnish to the National War Labor Board and to the Company a notarized list of members in good standing 15 days after the date of the Directive Order. If any employee named on that list asserts that he withdrew from membership in the Union prior to that date and any dispute arises, the assertion or dispute shall be adjudicated by an arbiter appointed by the National War Labor Board whose decision shall be final and binding upon the Union and the employees.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and bylaws of the Union) the dispute shall be regarded as a grievance and submitted to the grievance machinery."

2. Arbitration of other than Discharge Cases.

The new contract shall include the following arbitration provision:

"From and after the date of the Directive Order of the National War Labor Board in this case all disputes, differences, and grievances between the parties arising under the terms of this agreement, but not including any desired or proposed changes in the terms of this agreement, that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall, upon written notification by either party to the other, promptly be submitted to arbitration by a Board of Arbitrators. The Board of Arbitration shall include one member designated by the Union and one member designated by the employer; these designations shall be made within 24 hours after the receipt of the aforesaid notification. These two members of the Board of Arbitration shall attempt to agree upon a third arbitrator who shall serve as Chairman of the Board. Upon their failure to agree within 24 hours from the time of their designation, the Conciliation Service of the United States Department of Labor shall forthwith be requested to designate the third member who shall serve as Chairman of the Board. At the conclusion of the arbitration proceeding the Chairman, after consultation with the other members of the Board, shall render a decision and his decision shall be final and binding upon both parties. The expenses incident to the arbitrator shall be borne equally by the Union and the Company."

3. Changes in Standards.

The following provision is to be included in the new contract:

"From and after the date of the Directive Order of the National War Labor Board in this case, disputes, differences, or grievances arising with respect to changes in standards resulting from changes in materials or manufacturing methods or from the establishment of a new product or the introduction of a new type of machinery that shall not have been satisfactorily settled by operation of the grievance procedure provided for in this agreement shall be settled in the following manner:

"The controversy shall be submitted to a Board of Arbitration in accordance with the arbitration procedure herein set forth, but the Chairman of the Board shall be authorized to determine merely whether or not the standard or standards in the controversy shall be subject to redetermination. If he decides that such standard or standards shall be redetermined, the matter of redetermination shall be promptly submitted by him to a committee of three qualified engineers, one to be designated by the Company, one by the Union and one by the United States Department of Labor. A decision by a majority of the members of this committee shall be final and binding upon the Union and the Company. Any expenses incident to the appointment of the Chairman of the Board of Arbitration or of the member of the committee of engineers designated by the United States Department of Labor shall be borne equally by the Union and by the Company."

4. Retroactivity of Promotion of Inspectors to May 5.

The provisions relative to promotion, heretofore agreed to by the Company and the Union, shall be applicable to all the employees covered thereby, including inspectors, as of June 29, 1942.

ROBERT F. BLACK.
MARTIN P. DURKIN.
RICHARD T. FRANKENSTEIN.
WAYNE L. MORSE.
FRANK P. GRAHAM.
ROGER D. LAPHAM.

[SEAL]

NATIONAL WAR LABOR BOARD

[For immediate release, November 7, 1942.]

Following the unanimous recommendations of its panel, the National War Labor Board today unanimously directed Montgomery Ward & Co., Inc., to include provisions for union security, arbitration, and seniority in its agreement with the United Mail Order, Warehouse and Retail Employees' Union, which represents the 6,800 employees of the company's warehouse, mail-order house, and retail store in Chicago.

The action follows a Board order of September 6 directing the company to grant employees an increase of 5 cents an hour. On September 15, the company, while protesting the wage recommendations, informed the Board of its acceptance.

Recommendations for the present order were made by a panel composed of Lloyd Garrison, representing the public; William Hanscom, representing labor; and Joseph L. Miller, representing industry.

The present order directs the company to include in its contract the standard maintenance-of-membership clause, allowing any employee a period of 15 days from the date of the directive order during which he may resign from the union if he does not want to be bound to remain a member for the duration of the contract. The Board's order also directs that the agreement include a voluntary and revocable check-off clause, providing that an employee may request the company to deduct union dues from his pay for remittance to the union. The company will be bound to comply with such a request until the employee revokes it in writing or ceases to be employed by the company.

The Board also directed that the parties adopt a grievance procedure with time limits for each step. After 15 days unsettled disputes will be submitted to final and binding arbitration. In view of this provision for final arbitration, the union is directed to agree that "there shall be no strike, stoppage, slow-down, or other improper interference with production during the term of the agreement, and the company agrees that there shall be no lock-out."

The Board's order also contained seniority provisions.

The Board's panel submitted its unanimous recommendations "in the hope and the belief that experience, which is the only true guide in industrial relations, will demonstrate their value in removing sources of discontent and in promoting morale and harmonious relations."

Montgomery Ward & Co. owns and operates, in addition to its Chicago units, 8 mail-order houses and some 650 retail stores and warehouses. The Board's panel stated that with respect to 24 of these 658 units the company has entered into written contracts with labor organizations, both the American Federation of Labor and the Congress of Industrial Organizations. The panel stated that each of the contracts is substantially identical and consists of a form worked out by the Chicago office—the same form, with immaterial variations which was offered the union in this case, and the only form on the basis of which the company has been willing to negotiate.

Those participating in the unanimous Board decisions were George W. Taylor, vice chairman, Frank P. Graham, and Wayne L. Morse, all representing the public; Fred Hewitt, Robert J. Watt, and Delmond Garst, all representing labor; H. L. Derby, Robert F. Black, and Frederick S. Fales, all representing industry.

The directive order of the Board is attached:

NATIONAL WAR LABOR BOARD,
November 5, 1942.

Case No. 192

In the Matter of: *Montgomery Ward & Company, Inc. (Chicago, Illinois), and United Mail Order, Warehouse and Retail Employees' Union of the United Retail, Wholesale and Department Store Employees of America, Local No. 20*

DIRECTIVE ORDER

By virtue of and pursuant to the powers vested in it by Executive Orders No. 9017 of January 12, 1942, and No. 9250 of October 3, 1942, the National War Labor Board hereby directs the parties to incorporate the following provisions in a collective bargaining agreement:

1. Union Security.

"In order to secure the increased production which will result from greater harmony between workers and employers and in the interest of increased cooperation between union and management, which cannot exist without a stable and responsible union, the parties hereto agree as follows:

"All employees who, fifteen (15) days after the date of the National War Labor Board's Directive Order in this matter, are members of the Union in good standing in accordance with the constitution and bylaws of the Union, and all employees who thereafter become members, shall, as a condition of employment, remain members of the Union in good standing for the duration of this contract.

"The Union shall promptly furnish the National War Labor Board a notarized list of its members in good standing as of the fifteenth (15th) day after the date of the National War Labor Board's Directive Order in this matter. If any employee named on that list asserts that he withdrew from membership in the Union prior to that day, and any dispute arises, or if any dispute arises as to whether an employee is or is not a member of the Union in good standing, the question as to withdrawal or good standing, as the case may be, shall be adjudicated by an arbitrator appointed by the National War Labor Board, whose decision shall be final and binding on the Union, the employee, and the Company.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and bylaws of the Union), the dispute shall be regarded as a grievance and submitted to the grievance machinery, including the final step of arbitration.

"In the case of each employee who from time to time fills out, executes, and (in person or through his Union representative) delivers to his department head a form requesting the Company to deduct from his first pay of each month his Union dues for the preceding month of \$1.00 and to remit the same to the Union, the Company will act upon the request unless and until he revokes it in writing or ceases to be employed by the Company."

2. Arbitration.

"Grievances may be presented by an employee personally or through a Union representative, as the employee desires.

"A grievance may be presented first to the department manager.

"Any grievance not satisfactorily adjusted within five (5) days may then be presented to the management board member responsible for the department involved.

"Any grievance not satisfactorily adjusted within five (5) days after presentation to a management board member may be presented to the branch manager. The branch manager will reach and report a decision within five (5) days.

"If his decision does not settle the matter, it may be presented to the President of the Company or such other top executive as he may designate, by the President of the International Union or such other top executive of the International as he may designate. If these executives are unable within five (5) days of the presentation to adjust the grievance, it may be submitted to arbitration in the manner following:

"The said executives will make every effort to select a mutually satisfactory arbitrator or a mutually satisfactory person in whom they have confidence and whose appointment of an arbitrator for the parties shall be conclusive upon them. If the parties cannot agree upon an arbitrator or upon a person to appoint an arbitrator, either party may request the American Arbitration Association to appoint an arbitrator. After hearing the parties, the decision of the arbitrator, by whatever method he shall be appointed, shall be binding upon the parties, the expenses of the arbitrator shall be paid one-half by the Company and one-half by the Union.

"Grievances, within the meaning of the grievance procedure, shall consist only of disputes about working conditions, about the interpretation and application of particular clauses of this agreement, and about alleged violations of the agreement, including alleged abuses of discretion by supervisors in the treatment of employees. Changes in general business practice, the opening or closing of new units, the choice of personnel (subject, however, to the seniority provision), the choice of merchandise to be sold, or other business questions of a like nature not having to do directly and primarily with the day-to-day life of the employees and their relations with their supervisors, shall not be the subject of grievances

and shall not be arbitrable. If any question arises as to whether a particular dispute is or is not a grievance within the meaning of these provisions, the question may be taken up through the grievance procedure and determined if necessary by arbitration."

3. Seniority.

"In filling vacancies and determining lay-offs and call-backs, seniority shall govern where ability is substantially equal. Seniority shall be by departments or by such larger or smaller groups as the parties may from time to time agree upon."

4. No-strike Clause and Duration of Agreement.

"In view of the provision for final arbitration of disputes arising under this agreement, the Union agrees that there shall be no strike, stoppage, slow-down, or other improper interference with production during the term of the agreement, and the Company agrees that there shall be no lock-out.

"This agreement shall remain in force for one year from the date that it is signed and thereafter from year to year unless one party or the other gives notice in writing to the opposite party at least thirty days prior to the termination of the agreement that it does not wish to continue the agreement or that it proposes certain changes therein."

GEORGE W. TAYLOR, *Vice Chairman.*
FRANK P. GRAHAM.
WAYNE L. MORSE.
FRED HEWITT.
ROBERT J. WATT.
DELMOND GARST.
H. L. DERBY.
ROBERT F. BLACK.
FREDERICK S. FALES.

OFFICE OF WAR INFORMATION

NATIONAL WAR LABOR BOARD

[For release in papers of Saturday, August 21, 1943.]

Sharply asserting that a "take it or leave it" attitude on the part of employers in collective bargaining with unions is "fast becoming passe," Wayne L. M. Morse, public member, in an opinion on a case, said today that the National War Labor Board considered the War Labor Disputes Act as constitutional and valid and that the Board must apply the provisions of the act whenever it applies to a case before the Board.

The statement was made in an answer to an assertion to Montgomery Ward & Co., Inc., the company in the case, that the War Labor Disputes Act was void and unconstitutional. The company listed a number of reasons which Dean Morse answered individually.

The Board in the case directed the company to grant a standard voluntary maintenance-of-membership clause with a 15-day "escape" period starting August 20, 1943, during which union members may resign from the union, if they do not wish to remain members in good standing as a condition of employment for the duration of the contract.

The Board also directed that an arbitrator be appointed whose decisions shall be final and binding, as the last step on the grievance machinery.

A voluntary check-off provision and a seniority clause were also granted the union.

The provisions of today's orders were contained in the Board's order in the first Montgomery Ward case decided last September and November. The mail-order house and the retail store were involved in that case.

The question of wages was deferred pending further study by a panel in the case.

About 800 workers, represented by the United Mail Order, Warehouse & Retail Employees Union, Congress of Industrial Organizations, who work at the company's stores in Denver, Colo.; New York, N. Y.; and Detroit, Mich., are involved in the case.

The company's assertions regarding the act were made in objections to the report of a panel, which unanimously recommended maintenance of membership,

arbitration, seniority, and the check-off. Members of the panel were Chief Justice Walter P. Stacy, of the North Carolina Supreme Court, representing the public; Francis A. Davis, of Baltimore, Md., industry representative, and William A. Hanscom, member of the International Executive Council of Oil Workers, Congress of Industrial Organizations.

Industry members of the Board dissented from the grant of maintenance of membership and the check-off.

Dean Morse said that the Board's general counsel has already rendered an opinion that the intention of the War Labor Disputes Act was to confirm and add to the powers exercised by the Board, including specifically the power to grant maintenance of membership.

The company maintained that the grant of maintenance of membership would violate sections (1) and 8 (3) of the National Labor Relations Act. Under the War Labor Disputes Act, the Board cannot act in contravention of the National Labor Relations Act.

"The National War Labor Board," Dean Morse said, "has accepted and will continue to accept the War Labor Disputes Act as constitutional and valid until and unless the act is held to be unconstitutional by the courts. It is not within the province of the War Labor Board to pass upon the constitutionality of the act. Rather, it is the clear obligation of the Board to apply the act whenever it is germane to a case before it. It is a well-recognized principle that administrative law tribunals should presume that an act of Congress is constitutional until and unless a court of competent jurisdiction decides otherwise."

Dean Morse said the company had claimed that the act was unconstitutional because it delegates legislative power to the Board without sufficient standards; because it establishes compulsory arbitration and thus impairs the freedom of contract in violation of the fifth amendment to the Constitution of the United States, and because it is indefinite and unambiguous.

Among the other objections were that at least one person who participated in the panel's recommendations had a direct interest in the decision, and that the case did not involve a labor dispute which substantially interferes or might interfere with the war effort.

In reply, Morse said that "in the first place, it must be noted that no 'decision' was made by the Board's panel. The panel was the agent of the Board only for the purpose of attempting to assist the parties in reaching an agreement through mediation or in the event that no agreement was reached to submit to the Board its recommendations for a fair and equitable determination of the issues in dispute. * * * But even assuming that the panel has made a decision, the company has introduced no evidence to support its charge that at least one person" had an interest in the recommendations of the panel.

Dean Morse said that a "strike by the employees of an industrial concern of the size and importance of Montgomery Ward & Co., Inc., cannot be countenanced during the period of war."

He asserted that the company's objections to arbitration were rejected because the Board "is convinced that such a provision is a necessary part of a collective-bargaining agreement, particularly during the war period."

"Such arbitration procedure does not violate the managerial rights of the employer, but, rather, protects both the employer and the union from arbitrary, capricious, and dictatorial acts which either may seek to practice upon the other. It is the observation of the War Labor Board that in most cases in which employers have opposed arbitration as a last step in the grievance procedure, the facts show an unwillingness on the part of the employer to cooperate wholeheartedly with the union in collective bargaining. The instant case is no exception to that observation."

Dean Morse said that as the War Labor Board saw the company's position it was that "even though it may enter into a collective-bargaining agreement with a union as required by law, it reserves the right to defeat the aims and objectives of such an agreement by relegating to itself the authority of interpreting and applying that agreement as it sees fit."

He added that "employers who take the position that their employees must work under a collective-bargaining agreement as the employer dictates, irrespective of honest differences of opinion as to whether the employer's interpretations are in conformity with the terms of the collective-bargaining agreement, are likely not to fare so well before an arbitrator. Such a 'take it or leave it' attitude on the part of the employers is fast becoming passé, and fortunately so, in American industry."

The Board also issued a show-cause order to the company to appear at a public hearing before the Board at 10 a. m. September 3, 1943, to show cause why the provisions of the Board's directive order of September 5, 1942, and November 5, 1942, should not be extended to cover the company's printing department and display factory at Chicago. The company has maintained that the provisions of that order, granting wage adjustments, union security, seniority, and arbitration for employees of the Chicago plant of the company did not apply to that particular department and branch.

NATIONAL WAR LABOR BOARD,
August 20, 1943.

Case No. 3930-CS-D (940)

In the Matter of *Montgomery Ward and Company, Inc. and United Mail Order, Warehouse & Retail Employees Union, Locals of Denver, Colorado, Detroit, Michigan, and New York, New York CIO,*

DIRECTIVE ORDER

By virtue of and pursuant to the powers vested in it by Executive Orders No. 9017 of January 12, 1942, and No. 9250 of October 3, 1942, the act of Congress of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs the parties to incorporate the following provisions in a collective bargaining agreement:

1. Union Security.

"All employees who, fifteen (15) days after August 20, 1943, are members of the Union in good standing in accordance with the constitution and by-laws of the Union, and all employees who thereafter become members, shall as a condition of employment, remain members of the Union in good standing for the duration of this contract.

"The Union shall promptly furnish the National War Labor Board a notarized list of its members in good standing as of the fifteenth (15th) day after August 20, 1943. If any employee named on that list asserts that he withdrew from membership in the Union prior to that day, and any dispute arises, or if any dispute arises as to whether an employee is or is not a member of the Union in good standing, the question as to withdrawal or good standing, as the case may be, shall be adjudicated by an arbiter appointed by the National War Labor Board, whose decision shall be final and binding on the Union, the employee, and the Company.

"The Union agrees that neither it nor any of its officers or members will intimidate or coerce employees into membership in the Union. If any dispute arises (as to whether there has been any violation of this pledge or whether any employee affected by this clause has been deprived of good standing in any way contrary to the constitution and bylaws of the Union), the dispute shall be regarded as a grievance and submitted to the grievance machinery, including the final step of arbitration.

"In the case of each employee who from time to time fills out, executes and (in person or through his Union representative) delivers to his department head a form requesting the Company to deduct from his first pay of each month his Union dues for the preceding month of \$1.00 and to remit the same to the Union, the Company will act upon the request unless and until he revokes it in writing or ceases to be employed by the Company.

2. Seniority.

"In filling vacancies and determining lay-offs and call-backs, seniority shall govern where ability is substantially equal. Seniority shall be by departments or by such larger or smaller groups as the parties may from time to time agree upon."

3. Arbitration.

"Grievances may be presented by an employee personally or through a Union representative, as the employee desires.

"A grievance may be presented first to the department manager.

"Any grievance not satisfactorily adjusted within five (5) days may be presented to the management board member responsible for the department involved.

"Any grievance not satisfactorily adjusted within five (5) days after the presentation to a management board member may be presented to the branch manager. The branch manager will reach and report a decision within five (5) days.

"If his decision does not settle the matter, it may be presented to the President of the Company or such other top executive as he may designate, by the President of the International Union or such other top executive of the International as he may designate. If these executives are unable within five (5) days of the presentation to adjust the grievances, it may be submitted to arbitration in the manner following:

"The said executives will make every effort to select a mutually satisfactory arbitrator or a mutually satisfactory person in whom they have confidence and whose appointment of an arbitrator for the parties shall be conclusive upon them. If the parties cannot agree upon an arbitrator or upon a person to appoint an arbitrator, either party may request the American Arbitration Association to appoint an arbitrator. After hearing the parties, the decision of the arbitrator, by whatever method he shall be appointed, shall be binding upon the parties, the expenses of the arbitrator shall be paid one-half by the Company and one-half by the Union.

"Grievances, within the meaning of the grievance procedure, shall consist only of disputes about working conditions, about the interpretation and application of particular clauses of this agreement, and about alleged violations of the agreement, including alleged abuses of discretion by supervisors in the treatment of employees. Changes in general business practice, the opening or closing of new units, the choice of personnel (subject, however, to the seniority provision), the choice of merchandise to be sold, or other business question of a like nature not having to do directly and primarily with the day-to-day life of the employees and their relations with their supervisors, shall not be the subject of grievances and shall not be arbitrable. If any question arises as to whether a particular dispute is or is not a grievance within the meaning of these provisions, the question may be taken up through the grievance procedure and determined if necessary by arbitration."

4. The question of wages is deferred pending further study by the Panel in this case.

WILLIAM H. DAVIS, *Chairman.*
GEORGE W. TAYLOR, *Vice Chairman.*
FRANK P. GRAHAM.
WAYNE L. MORSE.
MARTIN P. DURKIN.
ROBERT J. WATT.
JOHN BROPHY.
VAN A. BITTNER.

Dissenting on Paragraphs 1 and 2:

ALMON E. ROTH.
CYRUS CHING.
GEORGE H. MEADE.
GEORGE K. BATT.

[SEAL]

NATIONAL WAR LABOR BOARD,
August 20, 1943.

Case No. 3930-CS-D (940)

In the Matter of: *Montgomery Ward & Company, Inc., (Chicago, Illinois) and United Retail, Wholesale & Department Store Employees of America, C. I. O., Local No. 20*

DIRECTIVE ORDER TO SHOW CAUSE

By virtue of and pursuant to the powers vested in it by Executive Order 9017 of January 12, 1942, the Executive Orders and Regulations issued under the Act of Congress of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby directs the above-named parties to appear before it on September 3, 1943, at 10:00 A. M., to show cause why the provisions of the Board's Directive Order of September 5, 1942, and November 5, 1942,

should not be extended to cover the Company's Printing Department and Display Factory at Chicago. The hearing will be held in Room 5333, Department of Labor Building, Washington, D. C.

FRANK P. GRAHAM.
WAYNE L. MORSE.
ROBERT J. WATT.
ALMON E. ROTH.
CYRUS CHING.
JOHN BROPHY.

[SEAL]

NATIONAL WAR LABOR BOARD,
August 20, 1943.

Case No. 3930-CS-D (940)

In the Matter of *Montgomery Ward & Company, Inc. and United Mail Order, Warehouse and Retail Employees Union, Locals of Denver, Colorado, Detroit, Michigan, and New York, New York, C. I. O.*

The Directive Order in this case was approved by the National War Labor Board, the following members voting: William H. Davis, George W. Taylor, Frank P. Graham, Wayne L. Morse, Martin P. Durkin, Robert J. Watt, John Brophy, and Van A. Bittner. The following members dissented on paragraphs 1 and 2: Almon E. Roth, Cyrus Ching, George H. Meade, and George K. Batt. The Directive Order to Show Cause was approved by the following members: Frank P. Graham, Wayne L. Morse, Almon E. Roth, Cyrus Ching, Robert J. Watt, and John Brophy. Mr. Wayne L. Morse, Public Member, was designated to write the opinion for the Board.

OPINION

The dispute involved in this case was certified by the Secretary of Labor to the National War Labor Board on December 7, 1942. It involves the retail stores of Montgomery Ward and Company, Incorporated, at Denver, Colorado, Detroit, Michigan, and New York, New York. The employees involved are all represented by local unions of the United Mail Order, Warehouse and Retail Employees Union of the United Retail, Wholesale Department Store Employees of America, C. I. O. This case, as it was presented before the War Labor Board's panel, included the issue as to whether or not the Board's Directive Order in Case No. 192 covered the employees in certain departments of the Company's plant in Chicago.

Mediation hearings on the issues of this case were held in January 1943, before a Mediation Panel of the National War Labor Board consisting of Walter P. Stacy, representing the Public, Francis A. Davis, representing Industry, and William Hanscom, representing Labor.

Ruling on the Chicago plant problem.

Does the Board's Directive Order in Case No. 192 cover the employees in the Printing and Display Departments of the Company's Chicago plant? At the opening of the hearing before the panel the union requested that the panel recommend to the War Labor Board that the provisions of its Directive Orders in Case No. 192 be extended to cover the employees in the Central Printing and Display Departments at the Company's Chicago store. Directive Orders in Case No. 192 were issued by the Board on September 5 and October 18, 1942. These orders provided for wage adjustments, a union maintenance clause, and arbitration and seniority provisions for employees of the Chicago plant of Montgomery Ward and Company. However, the Company has failed to extend the provisions of the War Labor Board's orders of September 5 and October 18, 1942, to the employees in the Central Printing and Display Departments of its Chicago plant.

The Union contends that the employees in these departments should receive the benefits of the Board's order, inasmuch as the Company now recognizes Local No. 20 as the collective bargaining agent of these employees. Two letters dated August 12, 1942, and October 26, 1942, signed by the Company's attorney were introduced by the Union as evidence of the fact that the Company now recognizes Local No. 20 as the collective bargaining agent for the employees in these particular departments.

The Company takes the position that the Board's order in Case No. 192 was not intended to cover nor should it be construed to cover the employees in either the printing or display departments. The Company argued in its briefs that both the Panel's report and the Board's Order in Case No. 192 defined the units involved and neither the printing nor display departments were specifically mentioned in said Orders. Secondly, the Company argued that the present wage scales in the two departments in question are the same as the wage scales now in effect in the units covered by the Board's wage order in Case No. 192 and that a further increase in these two departments would create wage inequalities.

The Board's Mediation Panel found that strictly speaking the question of whether or not the Board's Order in Case No. 192 should be construed to cover employees in the Printing and Display departments was not an issue in the case as certified and, therefore, the Panel did not pass judgment upon the merits of the issue. However, the Panel did recommend, as to this issue, that the Board should clarify its previously issued directive orders in Case No. 192 by giving the parties the benefit of a ruling as to whether the two departments in question fall within the terms of those Orders.

The Board has decided to dispose of this issue by directing the Company to show cause as to why the employees in the Central Printing and Display Departments of the Company's Chicago store should not be included in the Board's Directive orders in Case No. 192. Such a show-cause procedure will guarantee to the parties concerned a fair hearing and a full opportunity to present all evidence and contentions bearing upon this issue. Under this procedure, the rights of all parties will be protected and, at the same time, the show-cause order will eliminate the delay which would be entailed if the dispute between the parties over this issue were to be treated as a new controversy unrelated to Case No. 192. It is the judgment of the Board that the dispute over this issue is closely related to Case No. 192, and that no good purpose would be served by appointing a panel to handle it as a new and independent controversy.

The War Labor Board in case No. 192 has, after a careful consideration, determined the issues involved in that case as to all of the employees represented by the union except those in the printing and display departments. If there are any reasons which would justify a different determination for the employees in the printing and display departments, the company will have a full opportunity to set them forth in the show-cause hearing. After such a hearing, the War Labor Board will rule upon the issue as to whether the directive orders previously issued in case No. 192 should also be applied in whole or in modified form to the employees in the two departments under consideration. It is so ordered.

Rulings on the issues involving the Denver, Detroit, and New York stores.

The issues in this case involving the Denver, Detroit, and New York stores consist of the demands of the union that a union shop and check-off, seniority, and arbitration provisions be included in the agreement between the company and the locals at these respective stores. The Board's mediation panel has submitted unanimous recommendations in respect to each one of these issues. The National War Labor Board agrees with the unanimous report of the panel that the local unions involved in this case are entitled to the same benefits and protection as were afforded to the local union in the Chicago case No. 192. Hence, the Board's decision in the instant case extends to the employees of the stores in question the same pattern of union maintenance, seniority, grievance procedure, and arbitration which the Board has already established for the Chicago plant of the company by the terms of its directive orders in case No. 192.

It is to be noted that the Board's mediation panel found that precisely the same situation in respect to the seniority issue existed in the instant case as was present in the case No. 192. Thus the panel states:

"* * * Obviously, the same situation prevails throughout this company's entire organization in respect to seniority. This problem was considered at length in the prior case and a seniority clause was recommended to the Board, which in turn made such clause a provision of its directive order. The panel feels that in the light of all these circumstances and in view of the similarity of the problem, the same seniority clause should be recommended in this case."

The National War Labor Board agrees that the reasoning of the panel in case No. 192 is equally applicable here. The panel in the earlier case stated:

"In view of the fact that the agreement between the company and the union, when executed, will be the first one which they have entered into, and that their mutual relationships are in the earliest stage of development, we think that the simplest and least binding form of seniority clause should be proposed, to the effect that where ability is substantially equal, seniority should govern. Such a

clause should give management abundant leeway in retaining employees of superior capacity. Coupled with an arbitration clause as a part of the grievance procedure, which we shall discuss later, workers would be given substantial protection against favoritism and unfair treatment on the part of supervisors."

In case No. 192 the Board approved and directed the parties to include in their contract the following seniority clause:

"In filling vacancies and determining lay-offs and call-backs, seniority shall govern where ability is substantially equal. Seniority shall be by departments or by such larger or smaller groups as the parties may from time to time agree upon."

The Board hereby approves and directs the extension of the same seniority provision to the employees of the stores involved in the instant case. It is so ordered.

The Board also approves and directs that the same grievance procedure and arbitration provisions as were included in the Board's directive order in the Chicago case No. 192 be accepted by the parties in the settlement of this case. The objections of the company to a provision calling for arbitration as the final step in the grievance procedure are rejected. The Board is convinced that such a provision is a necessary part of a collective-bargaining agreement, particularly during the war period. Workers must not strike. On the other hand, employers, have no right to provoke work stoppages by refusing to provide grievance machinery which will guarantee prompt and fair settlement of day-to-day grievances. When the parties to such grievances are unable to settle their differences in conference between themselves, then it is only fair that the decision of an impartial third party should prevail. Such arbitration procedure does not violate the managerial rights of the employer but, rather, protects both the employer and the union from arbitrary, capricious, and dictatorial acts which either may seek to practice upon the other. It is the observation of the War Labor Board that in most cases in which employers have opposed arbitration as a last step in the grievance procedure, the facts show an unwillingness on the part of the employer to cooperate wholeheartedly with the union in collective bargaining. The instant case is no exception to that observation.

The importance to war production of a procedure whereby grievances may be settled promptly was recognized by the National War Labor Board in a statement unanimously adopted by the Board and released on July 1, of this year. The statement is repeated here because it is so completely applicable to the facts of this case in view of Montgomery Ward & Co.'s objection to being required to accept, during the war period, arbitration procedure as the last step in the settlement of grievances.

"The basis for the national war labor policy in America today is still the voluntary agreement between the responsible leaders of labor and industry that there be no strikes or lock-outs for the duration of the war. All labor disputes including grievances, therefore, must be settled by peaceful means. The giving up of economic pressures imposes upon employers and employees the obligation to develop peaceful procedures for the prompt and equitable settlement of the day-to-day grievances in the plant which arise in the interpretation and application of the contract.

"The experience of the National War Labor Board in the administration of the no-strike no-lock-out agreement has shown conclusively the proper grievance procedures under collective bargaining agreements have—

- "1. Prevented abuse of the no-strike no-lock-out agreement.
- "2. Removed obstacles to high morale and maximum production.
- "3. Preserved collective bargaining as a basic democratic institution in the total war effort.

"These fundamental American values and aids to the successful prosecution of the war can be attained by grievances procedures which provide—

- "1. That prompt initial attention be given to the grievance by those in the plant who have intimate knowledge of the dispute. The exact step and procedures for such attention to grievances must be adapted to the needs of the plant and can be best worked out by the parties themselves.
- "2. That the grievance procedure, whatever be its adaptation to the needs of the plant, should provide for the final and binding settlement of all grievances not otherwise resolved. For this purpose provision should be made for the settlement of grievances by an arbitrator, impartial chairman, or umpire under terms and conditions agreed to by the parties.

"Therefore, the National War Labor Board, as the custodian of the no-strike no-lock-out agreement and as a part of the all-out effort to win the war, calls upon the parties to all labor agreements to accept this urgent responsibility to render this patriotic service—

"1. To install adequate procedures for the prompt, just, and final settlement of the day-to-day grievances involving the interpretation and application of the contract.

"2. To make the full functioning of the grievance procedure major responsibility under the no-strike no-lock-out agreement for maximum production to win the war."

It follows that if in a given case, such as the instant one, the employer absolutely refuses to enter into a collective bargaining agreement with the union which provides for an arbitration clause as the last step in the grievance procedure, and as a result a dispute arises, the War Labor Board will direct that such arbitration procedure be adopted by the parties if in its judgment the facts of the case warrant it.

The Board has expressed the view in previous cases that during the war period neither employers nor unions should consider themselves free to dictate the terms and conditions under which labor relations shall be conducted in a given situation. As long as unions are not free to strike and by means of striking seek to improve their economic conditions by a test of economic force, it is not fair to permit employers to settle grievances any way they choose and at the same time expect labor to refrain from striking. The no-strike no-lock-out wartime policy places mutual responsibilities and obligations on both management and labor. By its very nature it is a restrictive policy insofar as the exercise of peacetime industrial relation practices are concerned. It is not a "one way" policy which only disarms labor of its economic weapons and leaves management free to settle grievances any way it chooses or not to settle them at all if it so chooses.

The argument of Montgomery Ward & Co. in opposition to the inclusion of an arbitration provision in the company's grievance procedure rests upon the promise that the employer and the employer alone should have the right to interpret and apply the terms and conditions set forth in the collective-bargaining agreement, even though the parties may be in serious dispute as to the reasonableness of the employer's interpretation. In other words, as the War Labor Board sees it, the essence of the position of Montgomery Ward & Co. on this issue is that even though it may enter into a collective bargaining agreement with a union as required by law, it reserves the right to defeat the aims and objective of such an agreement by relegating to itself the authority of interpreting and applying that agreement as it sees fit.

The company attempts to justify such a position by the claim that the submission of disputes over grievances would amount to an interference with its managerial rights, and would deprive its shareholders of the right to direct the affairs of the corporation which they own. Thus the company argues in its brief:

"The proposed order would require Ward's to surrender to outside arbitrators the final decision on all matters which the union may wish to treat as grievances. Thus Ward's 60,000 shareholders would be deprived of the right to direct, through the management they select, the affairs of the corporation they own."

However, the company's argument is well answered by the restrictive terms of the grievance procedure section which the War Labor Board ordered in case No. 192 and likewise orders in the instant case. The provision reads as follows:

"Grievance, within the meaning of the grievance procedure shall consist only of disputes about working conditions, about the interpretation and application of particular clauses of this agreement, and about alleged violations of the agreement, including alleged abuses of discretion by supervisors in the treatment of employees. Changes in general business practice, the opening or closing of new units, the choice of personnel (subject, however, to the seniority provision), the choice of merchandise to be sold, or other business question of a like nature not having to do directly and primarily with the day-to-day life of the employees and their relations with their supervisors, shall not be the subject of grievance and shall not be arbitrable. If any question arises as to whether a particular dispute is or is not a grievance within the meaning of these provisions, the question may be taken up through the grievance procedure and determined if necessary by arbitration."

The very language of the section on grievance procedure as above quoted protects the right of management from capricious and arbitrary demands of the union, and it protects the union from any employer who may be prone to adopt an

arbitrary and dictatorial attitude in administering a labor relations policy under a collective-bargaining contract.

Furthermore, this writer wishes to point out that the judicial processes of arbitration adequately protect an employer from unwarranted interference with his managerial rights by a union.

If an employer has a good case he has nothing to fear from submitting a dispute which arises under the terms of a collective bargaining agreement to an impartial third party. If that third party should violate his judicial trust by rendering a decision which is arbitrary, capricious, or in abuse of his discretion, the employer has adequate legal remedies. On the other hand, employers who take the position that their employees must work under collective-bargaining agreement as the employer dictates, irrespective of honest differences of opinion as to whether the employer's interpretations are in conformity with the terms of the collective-bargaining agreement, are likely not to fare so well before an arbitrator. Such a "take it or leave it" attitude on the part of employers is fast becoming passe, and fortunately so, in American industry.

Literally thousands of collective-bargaining contracts contain arbitration provisions similar to the one ordered by the Board in the instant case. It is decidedly in the interests of industrial harmony during the war period for the War Labor Board to insist that when parties to a labor dispute are unable to settle controversies over grievances by mutual agreement, they shall and must settle them by arbitration. The Board does not propose to be misled by the false reasoning that such an arbitration clause invades and violates legitimate managerial rights. On the contrary, the Board is satisfied that such an arbitration provision protects both the rights of management and labor to a square, fair, and judicial determination of those grievances which may arise under the terms of a collective-bargaining agreement.

The particular grievance procedure and arbitration machinery herein provided for is identical to that contained in the Board's decision in case No. 192, which procedure was devised only after careful consideration of the particular needs of that case. The provisions are equally applicable to the instant case and, therefore, the Board adopts them as a part of its directive order in this case.

The union requested the panel to recommend the union shop and check-off provisions in place of the maintenance-of-membership and check-off provisions awarded by the Board in its directive order in case No. 192. The union contended that the union shop was essential because of the alleged antiunion policy and lack of good faith on the part of the company in its dealings with the union.

The company refused to make the maintenance-of-membership and check-off provisions of the Board's directive order in case No. 192 applicable to the local unions involved in this case and reiterated its position that the provisions were illegal, uneconomic, erroneous, and contrary to the fundamental American principles of liberty and freedom.

The union's request for a union-shop provision is rejected. The company's position that there should be no form of union maintenance is also rejected. Instead, the Board approves the unanimous recommendation of its mediation panel and directs the parties to make, effective immediately a maintenance-of-membership provision by which all employees who are members of the union 15 days after the date of the Board's order and all employees who thereafter become members of the union must, as a condition of employment, maintain their membership in the union for the duration of the agreement. This provision is identical to the provision contained in the Board's order in case No. 192 and in many other cases. It is also ordered that the same check-off provision as was granted by the Board in case No. 192 be made applicable in the instant case.

Rulings on the supplemental objections and comments of Montgomery Ward & Co., Inc.

Montgomery Ward & Co., Inc., under date of June 29, 1943, submitted to the National War Labor Board supplemental objections and comments.

The company argued in the first place that the War Labor Disputes Act, which purports to authorize the War Labor Board to decide labor disputes, is unconstitutional and void for the following reasons:

(a) The act delegates legislative power to the Board without sufficient standards.

(b) The act establishes compulsory arbitration and thus impairs freedom of contract in violation of the fifth amendment of the Constitution of the United States.

(c) The act is indefinite and ambiguous.

The National War Labor Board has accepted and will continue to accept the War Labor Disputes Act as constitutional and valid until and unless the act is held to be unconstitutional by the courts. It is not within the province of the

War Labor Board to pass upon the constitutionality of the act. Rather, it is the clear obligation of the Board to apply the act whenever it is germane to a case before it. It is a well-recognized principle that administrative law tribunals should presume that an act of Congress is constitutional until and unless a court of competent jurisdiction decides otherwise.

The company further objects to the panel's report and recommendations on the ground that the proposed order would be illegal under the terms of the War Labor Disputes Act for the following reasons:

(a) The case does not involve a labor dispute which substantially interferes with or which might substantially interfere with the war effort.

(b) At least one person who participated in making the panel's recommendations had a direct interest in the decision.

(c) An order to the company to adopt a maintenance-of-membership clause would violate sections 8 (1) and 8 (3) of the National Labor Relations Act.

(d) An order to the company to check-off union dues would violate section 8 (2) of the National Labor Relations Act.

A paragraph contained in the recent opinion of Chairman William H. Davis in the case of the Electrical Transcription Manufacturers, case No. 111-2499-D, is applicable in this case in connection with the company's argument that the proposed order would be illegal under the War Labor Disputes Act on the ground that no labor dispute is involved which substantially interferes with the war effort.

"As to whether the dispute threatens substantial interference with the war effort within the meaning of the War Labor Disputes Act, it might well be argued that when Congress in section 7 (a) 1 of the War Labor Disputes Act provided that 'whenever the United States Conciliation Service * * * certifies that a labor dispute exists which might lead to substantial interference with the war effort * * * the War Labor Board should have the 'power and duty' to decide the dispute, it was the intention of Congress to leave to the Conciliation Service and the Secretary of Labor the determination of the question of fact whether the dispute was or was not one which might lead to substantial interference with the war effort. We do not need to decide that question in this case, because we have before us substantial evidence in the testimony of Mr. Elmer Davis and Commissioner Fly supporting the certification."

Likewise, the Board is not called upon in this case to decide whether it was the intention of Congress to leave to the Conciliation Service and to the Secretary of Labor the determination of the question of whether the dispute might interfere with the war effort. The question of whether a strike by the employees of Montgomery Ward & Co. would interfere with the war effort was considered in great detail by the panel which originally heard the case of Montgomery Ward & Co. involving its Chicago store, case No. 192. This writer also wrote an opinion in that case on the question of the Board's jurisdiction. The opinion was dated June 29, 1942, and reference is here made to it in its entirety. The following paragraph is repeated:

"The Board wishes to call the attention of the company to the fact that it is one thing for a long-suffering and patient public to stand by during peacetimes while American employers and labor unions settle their differences by contests of economic force in the form of lock-outs and strikes, but it is quite another thing to expect the American public or its Government, faced with the vital task of winning this war, to stand by while the Montgomery Ward & Co., or any other important business concern carries on a fight with labor under the guise that it has the right to do so because the fight doesn't effect the prosecution of the war."

The Board's decision in the former case is hereby reaffirmed. A strike by the employees of an industrial concern of the size and importance of Montgomery Ward & Co., Inc., cannot be countenanced during the period of this war. The Board finds that it is its duty and obligation to determine this dispute and that there is not prohibition in the War Labor Disputes Act which prevents its taking jurisdiction of the case.

The company contended that the order proposed by the Board's mediation panel would be illegal under the terms of the War Labor Disputes Act because at least one person who participated in the panel's recommendations had a direct interest in the decision. This argument must be rejected. In the first place, it must be noted that no "decision" was made by the Board's panel. The panel was the agent of the Board only for the purpose of attempting to assist the parties in reaching an agreement through mediation or in the event that no agreement was reached to submit to the Board its recommendations for a fair and equitable determination of the issues in dispute. Thus it is seen that the panel did not make any decision. But even assuming that the panel had made a decision, the

company has introduced no evidence to support its charge that at least one person who participated in the work of the panel and joined in the unanimous recommendations of the panel had a direct interest in the decision.

The Board's general counsel submitted to the Board on July 26, 1943, an opinion on the qualifications of Board members under section 7 (c) of the War Labor Disputes Act. The opinion was approved by the Board and released to the public on July 30, 1943. The general counsel in that opinion set forth the situations in which members of the national and regional boards would be disqualified from participating in decisions. The situations are as follows:

"(a) Labor members are disqualified where they are officers, employees, or members of a local union which is a party to the dispute. (We realize that the section does not use the word 'member.' So direct and intimate, however, is the relationship between a local union and a member that we believe it must be considered as within the reasonable intendment of the act.)

"Industry members are disqualified where they are officers or employees of a party to a dispute, or members of an unincorporated association which is a party.

"(b) Labor members are disqualified where they are officers or employees of a national or international union which is a party to a dispute, or, while not a party, is acting in the dispute on behalf of a local union which is a party.

"Industry members are disqualified where there are officers or employees of a trade association or employers association which is a party to the case or while not a party, is acting in the case on behalf of the employer who is a party.

"(c) A labor member is disqualified where he acts, generally, or in a specific case, as the agent designated for that purpose by the local union, as for instance, an officer of the international who took part on the local union's behalf in the negotiations preceding certification of the dispute; or, as in the case of departments or regions of the United Automobile Workers in Michigan, where the union official in charge of one of the five departments or seven regions may be said to be the general agent of those local unions which are under the supervision of the department or region. Such a person, if a member of the Michigan regional board, would be disqualified in cases involving local unions under the supervision of his department or region.

"An industry member who acts generally or in the specific case before the Board as the agent of the employer is disqualified in cases involving the employer. Examples of such situations would be an industry member who is a director of a corporation, or a member of a partnership or the trustee of a business trust, any one of which is a party to a dispute before the Board. And disqualification would attach to an industry member who, apart from anything else, had acted on the employer's behalf in the negotiations preceding the dispute.

"(d) A labor member supervising the affairs of a local under a trustee or receivership arrangement would be disqualified from participating in a decision to which the local union was a party. Although in such a situation he would not be an officer or employee of the local union, his relationship to it would be of such an intimate character as to come within the ban of the section.

"An industry member serving as a trustee or receiver of an employer who was a party to a case before the Board would similarly be disqualified.

"(e) There will undoubtedly be situations not falling directly into any of the above categories where the relationship between a Board member and one of the parties is of such a character as to warrant disqualification. In these cases common sense, discreet judgment, and considerations of fair play will need to guide the members of the Board."

No evidence has been submitted by the company nor is there anything in the record disclosing that either the public, labor, or industry member of the panel in the instant case was disqualified from serving on the panel for any of the reasons aforementioned or for any other reason.

The company's argument that a maintenance-of-membership clause would violate sections 8 (1) and 8 (3) of the National Labor Relations Act is rejected. The Board has since its very early decisions taken the position that a maintenance-of-membership provision was not in conflict with sections 8 (1) and 8 (3) of the National Labor Relations Act and could, therefore, be awarded by the National War Labor Board under Executive Order 9017 which created the Board. This writer expressed the Board's position on this contention in the opinion in the *Little Steel case* dated July 16, 1942, as follows:

"The maintenance-of-membership clause is not contrary to the National Labor Relations Act if it falls within the proviso of section 8 (3). This specific question has not been adjudicated by any court, and it is therefore proper that we look to the interpretation of the National Labor Relations Board.

"On September 11, 1941, the President of the United States suggested to the Chairman of the then existing National Defense Mediation Board that the Board consider, with the National Labor Relations Board, the question now under discussion. This was done, and the general counsel of the National Labor Relations Board confirmed the opinion of the National Defense Mediation Board and reached the conclusion (1) that the proviso to section 8 (3) makes it lawful under the National Labor Relations Act * * * for an employer to make an agreement with an unassisted union, which is the exclusive representative of the employees in an appropriate unit, requiring as a condition of employment that such employees be members of the contracting union; (2) that the proviso is not confined to the closed-shop variety of contract; and (3) that an employer does not engage in unfair labor practices within section 8 of the National Labor Relations Act by including in a contract with a proper labor organization a maintenance-of-membership clause."

"The rationale of this result lies in the purpose of the proviso. The proviso allows contracts which 'require as a condition of employment membership' in a contracting labor organization which is the exclusive representative of the employees in an appropriate unit. It is obvious that the maintenance-of-membership clause goes no further than to require as a condition of employment 'membership' in the union. The only difference between this clause and the closed-shop provision is that the latter requires all employees to be union members as a condition of employment, whereas the clause awarded in the instant case makes membership a condition of employment only with respect to those employees who, after a 15-day period following the directive order, are members of the union or who thereafter become members during the life of the contract. Both 'require as a condition of employment membership' in the contracting union."

"The general counsel of the National Labor Relations Board has also pointed out that although the House and Senate committees discussed the section under consideration only as it related to the closed-shop contract, yet 'the legislative history of the act does not warrant any conclusion that Congress intended to confine the protection of the proviso to closed-shop contracts.'"

"The National Labor Relations Board not only has held that closed shops come within the proviso but has also included union preference contracts within its scope. The union preference and close-shop contracts differ only in degree, as also does the maintenance-of-membership clause. The essential similarity lies in their identity of purpose, namely, the recognition of the advisability of allowing and protecting the strength of bona fide labor organizations. It would be a tortured construction of the National Labor Relations Act to rule that any agreement which provides for a degree of unionism less than the closed shop would be in conflict with the act, whereas a closed-shop agreement would not be. The contention of counsel in this case amounts to just that."

"Furthermore, the position of counsel on this point is not well taken because of the fact that the maintenance of membership provision is not being adopted voluntarily by the parties, but, in fact, is being imposed upon them by the order of the War Labor Board in accordance with its duty finally to determine this particular labor dispute which threatens to interrupt a successful prosecution of the war effort. Therefore the provisions of the National Labor Relations Act are in no way applicable to the case."

It is the opinion of General Counsel for the Board that the provisions of the War Labor Disputes Act have in no way deprived the Board of its authority to render a decision providing for maintenance of membership. A learned opinion by the Board's General Counsel on this subject will be released in the near future. It supports and sustains the Board's position that it was the clear intention of Congress when it passed the War Labor Disputes act to confirm and add to the powers heretofore exercised by the Board, including specifically the power to order maintenance of membership. Likewise, General Counsel's opinion sustains the Board's previous decisions holding that the maintenance-of-membership provision is in conformance with the National Labor Relations Act.

No evidence has been presented in this case or any other case to show that a check-off of union dues would violate Section 8 (2) of the National Labor Relations Act as contended by the Company. It is the position of the War Labor Board that the very language of section 8 (2) of the National Labor Relations Act makes clear that the Company's argument as to check-off is without merit. Checking-off of dues by an employer does not constitute a domination or interference "with the formation or administration of any labor organization" especially when the checking off is at the request of the labor organization and by the order of a government tribunal. Likewise, the ordinary meaning of the words

of the section makes clear that checking off dues does not constitute the making of a financial contribution or giving of other support to a union by an employer. It is the view of the Board that the Company's contention that section 8 (2) of the National Labor Relations Act makes it illegal for the Board to order a check-off under the terms of the War Labor Disputes Act is so strained and lacking in merit as to justify dismissing it without further comment.

The third major point set forth in the Company's supplemental objections and the comments was that the proposed order would deprive the Company of liberty and property without due process of law and in violation of the Fifth Amendment to the Constitution of the United States for the following reasons:

1. The Company was not afforded a fair hearing.
2. The Panel's recommendations are not supported by substantial evidence.
3. The Panel's recommendations are discriminatory.
4. A maintenance of membership clause would impair the employee's freedom to work and the Company's freedom to employ.
5. An order of compulsory arbitration would impair the Company's freedom of contract.

The National War Labor Board will not deprive any party to a dispute pending before it an opportunity for a full and fair hearing.¹ The Company now contends that it was not afforded a fair hearing. No evidence whatsoever was presented by the Company to support this allegation. It is the holding of the War Labor Board that the record of this case shows that the Company was provided with the opportunity for a full and fair hearing and with due process of law as provided by law. The hearings held by the Panel were in accordance with the legal principles discussed in the Board's decision in the Winchester Arms case cited above. Hence, the Company's unsupported allegations on these points are dismissed by the Board as being frivolous and without merit when considered from the standpoint of the facts as shown by the record.

Likewise, the Company failed to present any evidence in support of the claim that the Panel's recommendations are not supported by substantial evidence and are discriminatory. The record before the Board is a complete answer to such charges. It is the decision of the Board that the Panel's recommendations are not only based upon substantial evidence, but are, in fact, supported by a clear preponderance of the evidence.

Further, the Board wishes to call attention to the fact that for the most part the issues in this case involved a consideration of practically the same issues and contentions which were before the Board in Case No. 192. The Panel in the instant case, as well as the parties were well aware of that fact. Hence, the Panel and the Board took judicial notice of the record made by the Company and the Union in Case No. 192 in addition to the record made in the instant and closely related case.

The charge of the Company that the Panel's report is not supported by substantial evidence and is discriminatory is so completely without foundation in fact as shown by the record as to justify the Board's dismissing it, not only on the ground that it is lacking in merit, but also because it apparently was made as a pro forma and pretensive objection.

Lastly, the Company's objections to a maintenance-of-membership clause and to compulsory arbitration have been answered heretofore in this decision as well as in many other decisions of the War Labor Board. It would be unnecessarily repetitious to go into these matters again. The War Labor Board intends to continue to order union maintenance and arbitration whenever in its judgment the record of a given case shows that a wartime labor dispute can be settled in the best interest of the war effort by such a decision. It is satisfied that arbitration and union-maintenance clauses can be ordered by it in the final determination of labor disputes during the war, under both the Executive orders binding upon the Board as well as under the War Labor Disputes Act. Hence it proposes to exercise its judicial discretion in regard to the same unless and until a court of competent jurisdiction rules to the contrary.

Opinion by

WAYNE L. MORSE.

¹See Winchester Repeating Arms Co. and United Electrical, Radio and Machine Workers Union, Local No. 282, CIO, Case No. 443—May 1, 1943.

OFFICE OF WAR INFORMATION

NATIONAL WAR LABOR BOARD

[For release in morning papers of Tuesday, January 18, 1944.]

The collective-bargaining agreement between Montgomery Ward & Co. and the United Mail Order, Warehouse and Retail Employees, Congress of Industrial Organizations, covering approximately 7,000 employees in the company's Chicago warehouse, mail-order house, and retail store, was extended for a 30-day period by the National War Labor Board, it announced today.

The Board's vote on the case was five to one, with one industry member, James Tanham, dissenting.

The 30-day period dates from January 15, when the parties were notified of the Board's decision.

The Board directed that the contract, which was entered into by the company and the union at the direction of the War Labor Board on December 8, 1942, be continued in effect beyond the 30-day period, if the company and the union agree to a determination by the National Labor Relations Board of the question of the union's representation rights or if the union petitions the National Labor Relations Board for such a determination. The contract would then be in effect until such time as the National Labor Relations Board determines the proper bargaining agent for the employees now covered by the contract.

The Board directed that if the union, after having filed the petition for an election or card check, fails to agree to a card check or election, the company has the right to appeal to the War Labor Board for termination or modification of its order extending the contract.

The Montgomery Ward Co. has contested the union's request for an extension of the old contract on the grounds that the union no longer represents a majority of the employees in all the units. The company particularly alleged that the union no longer represented a majority at the mail-order house and retail store, the two largest Chicago units.

The Board's order is based on evidence presented by the company and the union at a public hearing before the War Labor Board on December 16, 1943.

In an opinion on the Board's decision, Chairman William H. Davis commented on the company's position, as asserted at the hearing, that an order of the War Labor Board extending the contract would be contrary to the National Labor Relations Act, and on the position of the union that no National Labor Relations Board procedure should be invoked since it was demonstrably the majority representative.

"The contested question of representation is obviously not one for this Board to decide," said Chairman Davis. "We are required by the War Labor Disputes Act to leave such questions for the determination of the National Labor Relations Board. But courts have held that National Labor Relations Board certification of exclusive bargaining representatives is presumed to have continuing effect until changed by that Board."

For the War Labor Board to apply that requirement of the War Labor Disputes Act without exception, and without taking into account changed conditions or the date of certification, "would, in effect, unlike the court decisions cited above, deprive employers of their only means of seeking a redetermination by the National Labor Relations Board of the representation question, namely, by refusing to bargain with a union which an employer had claimed had lost its majority status," Chairman Davis stated.

The Chairman pointed out that the certification of the union by the National Labor Relations Board took place 2 years ago, and there has been a great turnover in the labor force since that time.

"The Board is not equipped, nor is its function, as we have said, to determine whether the union has lost or retained its majority status. But it seems to us that under the circumstances of this case the Board should furnish the parties an opportunity to have the matter resolved by the National Labor Relations Board * * *."

The Board's extension of the terms and conditions of the old contract was based on two "compelling reasons," said the Chairman. "We believe it necessary, in

the first place, in order to avoid the unrest and conflict that would be bound to arise if, in an enterprise as large, important, and as centrally located as Montgomery Ward's Chicago store, the employees were suddenly to find themselves without a contract * * *."

"Secondly, we think that, so far as possible, the status quo as of the date of contract termination should be preserved since the issue in question relates to the extent of union membership on that date. In the nature of things it was not possible to have the issue then and there decided. But surely, neither party would seek or obtain any advantage from the lapse of time attendant upon the orderly processes of this Board or the National Labor Relations Board. The necessary effects of a continued lapse of the contract would so disadvantage the union in the period from now until the holding of the election that failure to extend its provisions would, for all practical purposes, amount to prejudging the issue of representation. * * *"

Chairman Davis asserted that in view of the War Labor Board's original decision in the dispute between the company and the union in November 1942, it was not necessary to comment on Montgomery Ward's contention that the War Labor Board had no jurisdiction in this dispute.

The Board's order and Chairman Davis' opinion are attached.

NATIONAL WAR LABOR BOARD,
January 13, 1944.

Case No. 111-5353-HO

In the Matter of: *Montgomery Ward and Company and United Mail Order, Warehouse, and Retail Employees, Local 20, CIO*

DIRECTIVE ORDER

By virtue of and pursuant to the powers vested in it by Executive Order No. 917 of January 12, 1942, the Executive Orders, Directives and Regulations issued under the Act of October 2, 1942, and the War Labor Disputes Act of June 25, 1943, the National War Labor Board hereby decides the dispute between the parties and orders:

1. The terms and conditions of the contract between the parties effective December 8, 1942, shall continue to govern the relations between the parties for a period of 30 days from the date hereof.

2. If, within such 30-day period the parties by mutual agreement provide for the determination by the National Labor Relations Board of the question of employee representation or, failing agreement, if the union, within the said 30-day period petitions the National Labor Relations Board for a determination of the question, the terms and conditions of the said contract shall be further extended and shall continue to govern the relations between the parties until the determination of the collective bargaining representative of the employees involved, or until the further order of this Board; provided, however, that if the union, having within the said period filed such a petition, thereafter fails to prosecute the same diligently the company may petition the Board to terminate or modify this order.

Representing the public:

WILLIAM H. DAVIS.
GEORGE W. TAYLOR.

Representing labor:

ROBERT J. WATT.
CARL J. SHIPLEY.

Representing industry:

GEORGE H. MEAD.

Dissenting:

JAMES TANHAM.

NATIONAL WAR LABOR BOARD,
January 13, 1944.

Case No. 111-5353-HO

In the Matter of *Montgomery Ward & Company and United Mail Order, Warehouse, and Retail Employees, Local 20, C. I. O.*

OPINION

In February 1942, the National Labor Relations Board certified the United Mail Order, Warehouse, and Retail Employees, Local 20, C. I. O., as the exclusive bargaining representative of the employees of Montgomery Ward & Company within the units designated as the Mail Order House Unit and the Retail Store Unit. The union was also recognized by the company, or certified by the National Labor Relations Board, as the representative of the company's employees within five other designated units. Negotiations subsequently begun for a contract broke down and the ensuing labor dispute was certified to the National Labor Relations Board, pursuant to the provisions of Executive Order No. 9017, on June 2, 1942. The Board issued a directive order determining the dispute and a contract between the parties, which included the provisions of the Board's order, became finally effective on December 8, 1942, expiring on December 8, 1943. Upon the union's request that the parties undertake to negotiate a renewal agreement the company asserted that the union no longer represented a majority of the employees within the Mail Order House and Retail Store Units and it consequently refused to bargain with the union.

The resulting labor dispute was certified to this Board on December 6, 1943, pursuant to the provisions of the War Labor Disputes Act. The only issue presently in dispute is one of representation. On December 10, 1943, the Board requested the company and the Union to show cause at a public hearing "why they should not consent to an election or card check to be held under the auspices of the National Labor Relations Board to determine the issue as to the union's majority status in the two units and pending the results of such election or check why the terms and conditions of the existing contract should not be extended."

The position of the company, at the public hearing held on December 16, was that the union represents only a small proportion of the employees within each unit and that the question of representation and the company's statutory obligation to bargain with the union is for the exclusive determination of the National Labor Relations Board. Pending such determination, it was asserted, the expired contract should not be extended since any order of this Board to that effect, requiring the company to continue to treat the union as the majority representative of the employees within the units, would be contrary to the National Labor Relations Act.

There is no present necessity to invoke the procedures of the National Labor Relations Act, alleged the union at the public hearing, since it could be demonstrated that the union still represents more than a majority of the employees within each of the units in question. But if the Board should require that the issue of representation be resolved by an election or card check under the auspices of the National Labor Relations Board, the terms and conditions of the existing agreement should be extended pending final action by the National Labor Relations Board.

The contested question of representation is obviously not one for this Board to decide. We are required by the War Labor Disputes Act to leave such questions for the determination of the National Labor Relations Board. But courts have held that a National Labor Relations Board certification of exclusive bargaining representative is presumed to have continuing effect until changed by that Board. (See *Oughton et al. v. NLRB*, 118 F. (2d) 486, (C. C. A. 3rd, 1941), cert. den. 315 U. S. 797 (1942); *International Association of Machinists v. NLRB*, 311 U. S. 72 (1940); *Brotherhood of Railway & Shipping Clerks et al. v. Virginian Railway Co.*, 125 F. (2d) 853, (C. C. A. 4th, 1942), *NLRB v. Highland Park Manufacturing Co.*, 110 F. (2d) 632 (C. C. A. 4th, 1940). In the *Oughton* case this principle was described as "the rule of presumed continuity of representative status."

If, however, the Board should apply that rule without exception or condition and regardless of the date of certification or of any change in size, composition or character of the work force, we would, in effect, unlike the court decisions cited above, deprive employers of their only means of seeking a redetermination by the National Labor Relations Board of the representation question; namely, by

refusing to bargain with a union which an employer claimed had lost its majority status. In the ensuing proceeding under Section 8 (5) of the National Labor Relations Act the representation question may, as we understand the practice of the National Labor Relations Board, be determined.

There are consequently those cases where, since the date of certification by the National Labor Relations Board, such a major change in circumstance has occurred as to cast doubt upon the continued significance of the National Labor Relations Board certification. A bare assertion that a union, previously certified by the National Labor Relations Board, has lost its majority status will not, however, persuade the War Labor Board to deny to the union the benefits that attach to the certification. Substantial evidence must demonstrate in each case that events occurring since the National Labor Relations Board certification have been of so compelling a character that opportunity to seek a redetermination of the question should not be foreclosed.

In the instant case the union certification is two years' old; there has been a great turn-over in the labor force since that time, more than a thousand of those who were in the company's employ at the time of the election now being in the armed forces. It is alleged that of the group of employees who selected the union as their representative in the mail-order house in February 1942, only 28% now remain in the bargaining unit and this group constitutes less than 15% of the employees within the unit. In the Retail Store only 26% of the eligible employees who chose the union in February 1942 remain within the unit and this group constitutes, we are told, only 16% of those now employed in the unit. Moreover, it has been stated by the company that "less than 18% of the employees in the Mail Order House and less than 20% in the Retail Store" now have outstanding authorizations to the company to check off union dues.

The union, on the other hand, has pointed out that in November 1942 it delivered to the company a check-off list of about 3,700 members, and that as union members left the company's employ new employees joined the union with the result that during 1943 it has handed the company more than 10,000 check-off cards. Emphasis is also placed by the union on the fact that during the 15-day escape period provided for in the maintenance-of-membership clause ordered by the Board which took effect in December 1942 only 14 of the 3,700 employees who had signed check-off cards resigned from the union. For the month of November the union received from the company a check-off check for \$2,225.00 and for December a check for \$2,048.00. There are, in addition, says the union, 300 to 500 members who pay their dues directly.

The Board is not equipped, nor is it its function, as we have said, to determine whether the union has lost or retained its majority status. But it seems to us that under the circumstances of this case the Board should furnish the parties an opportunity to have the matter resolved by the National Labor Relations Board. This should be done either by consent of the parties or, failing agreement, by the union filing a petition for an election with the National Labor Relations Board within 30 days following the date of this Order.

While both parties appear willing to submit to an election or card check, we are not altogether clear from the discussion at the public hearing whether agreement can also be reached on the matter of appropriate bargaining units. If disagreement on this score should arise, it would need to be resolved by the National Labor Relations Board on the union's petition. This question, too, the statute requires, must be left for decision by that Board.

Pending determination of the National Labor Relations Board, however, the terms and conditions of the contract just expired should continue to govern the relations between the parties. There are two compelling reasons for this action. We believe it necessary, in the first place, in order to avoid the unrest and conflict that would be bound to arise if, in an enterprise as large, important, and as centrally located as Montgomery Ward's Chicago store, the employees were suddenly to find themselves without a contract. Similar considerations have, in prior cases, induced the Board to take the same action (*Bituminous Coal Operators and United Mine Workers*, Case No. 111-1284; *New York-New Jersey Metropolitan Milk Distributors*, Case No. 197; *Westinghouse Air Brake Company*, Case No. 111-1244-D; *General Motors Corporation*, Cases Nos. 125 and 128; *Trucking Industry in 12 Midwestern States*, Cases Nos. 4648 and 4448).

Secondly, we think that, so far as possible, the status quo as of the date of contract termination should be preserved since the issue in question relates to the extent of union membership on that date. In the nature of things it was not possible to have the issue then and there decided. But surely, neither party should seek or obtain any advantage from the lapse of time attendant upon the

orderly processes of this Board or the National Labor Relations Board. The necessary effects of a continued lapse of the contract would so disadvantage the union in the period from now until the holding of the election that failure to extend its provisions would, for all practical purposes, amount to prejudging the issue of representation. By extending the contract provisions the relative positions of the company, the union, and the employees, as they were when the contract terminated, are preserved until the representation issue has been determined by the proper governmental agency.

The company has asserted that such an order of the Board would be contrary to the National Labor Relations Act since the company would be required to treat a minority union as the exclusive representative of the employees within the units. This contention, of course, assumes the very fact in issue. While the evidence submitted may be sufficient to justify this Board in holding that the question ought to be referred to the National Labor Relations Board for determination, it is by no means sufficient to warrant the assumption that the 1942 certification has lost all significance. In the present state of the record, we are satisfied that it is "fair and reasonable" to continue in effect, until the National Labor Relations Board has acted, the terms and conditions of the agreement.

The company's fear that it would be guilty of an unfair labor practice if it continues, in the face of its doubt, to treat the union as a majority representative is, in the light of the court decisions cited above, unfounded. It should be particularly noted in this connection that during the entire contract period the union called upon the company to discharge only one employee under the maintenance-of-membership provision—a request which, it was stated at the hearing before us, had been refused by the company.

It is unnecessary to comment at length on the company's objection to the Board's jurisdiction. In view of the statement made during the public hearing by the company's representative that the factual situation has not changed since the Board's decision in case No. 192, we need only refer to the opinion and the panel report in that case.

WILLIAM H. DAVIS, *Chairman.*

NATIONAL WAR LABOR BOARD,
Washington 25, D. C., July 4, 1944.

HON. ROBERT RAMSPECK,
*Chairman, Select Committee to Investigate Montgomery Ward Seizure,
House of Representatives, Washington, D. C.*

MY DEAR CONGRESSMAN RAMSPECK: During my appearance before the House committee appointed to investigate the Montgomery Ward matter some question was raised regarding the decision of the sixth regional War Labor Board relinquishing jurisdiction over a dispute between Sears, Roebuck & Co. and its employees in Minneapolis. At the time of my appearance the *Sears, Roebuck case* was pending on appeal before the National War Labor Board and I was not in a position to discuss its merits. I now enclose for the information of your committee seven copies of a directive order by the National War Labor Board unanimously reversing the decision of the regional board for the reasons therein set forth.

Respectfully yours,

WILLIAM H. DAVIS,
Chairman, National War Labor Board.

OFFICE OF WAR INFORMATION

NATIONAL WAR LABOR BOARD

[For release in morning papers, of Wednesday, July 5, 1944.]

B-1618. SEARS, ROEBUCK & CO., MINNEAPOLIS, MINN.

The National War Labor Board, in a unanimous decision, today referred back to the sixth regional War Labor Board at Chicago, Ill., for further panel hearings, a dispute between Sears, Roebuck & Co., and the International Longshoremen's and Warehousemen's Union, Congress of Industrial Organizations, with a provision that the proceedings be stayed if the company or any union petitions the National Labor Relations Board for a collective bargaining election.

The case involves approximately 1,100 employees in the company's mail order house in Minneapolis, Minn.

The regional war labor board, after considering a panel report on some of the issues involved, "dismissed the case for lack of jurisdiction on the ground that the company's refusal to bargain was an issue determinable only by the National Labor Relations Board, and that the other questions in dispute should await determination of that issue," the National Board said in a statement preceding its order.

"The regional board was correct in holding that refusal to bargain presents an issue which is determinable only by the National Labor Relations Board," the statement continued. "The National War Labor Board, however, has not only the power but the duty under the War Labor Disputes Act to provide, in the case of disputes properly certified to it by the United States Conciliation Service, the terms and conditions of employment which shall govern the relationships between the parties."

The Board's order explains that, in taking jurisdiction, it is "merely exercising its authority under the War Labor Disputes Act to fix the terms and conditions of employment and is not undertaking to order the company to bargain collectively."

It further stated that the provision for a stay of the proceedings if a petition for an election is filed with the National Labor Relations Board has been directed "in the light of the particular circumstances and is not to be taken as creating a general precedent."

The order provides that the proceedings be stayed until the petition is acted upon and, if the petition is granted, until the certification of a collective bargaining agent is made. If the petition is denied or if it is granted, an election is held and the Congress of Industrial Organizations union, previously certified, is again certified, the processing of the case will be resumed. If another union, or no union, is certified the proceedings will be dismissed.

Two elections won by the Congress of Industrial Organizations union were contested by the American Federation of Labor. The company would not bargain with the Congress of Industrial Organizations union, contending it did not know which union represented a majority of the employees, and on August 4, 1943, the dispute over refusal to bargain and other issues, including union security, grievance procedure and arbitration, was certified to the National War Labor Board by the Conciliation Service as a dispute which might lead to substantial interference with the war effort.

The Board accepted jurisdiction over the dispute by unanimous vote on August 30, and referred it to the regional war labor board at Chicago for handling.

On November 4, 1943, after panel hearings had begun in the case, the National Labor Relations Board upheld a decision of its regional director denying the American Federation of Labor's petition for a hearing on the conduct of the collective bargaining election won by the Congress of Industrial Organizations.

The regional war labor board dismissed the dispute on jurisdictional grounds on April 15, 1944. The Congress of Industrial Organizations petitioned the National Board for review of the action.

Commenting on the regional board's decision, the National Board said:

"It was the duty of the regional board either to decide the issues in dispute, or, if it found facts not previously before the National War Labor Board indicating a lack of jurisdiction, to certify back to the National Board the question of jurisdiction with appropriate findings and recommendations."

The Board's order is attached.

NATIONAL WAR LABOR BOARD,
June 19, 1944.

Case No. 111-3085-D

In the Matter of *Sears Roebuck Co., Minneapolis, Minn., and International Longshoremen's and Warehousemen's Union, Local 214, C. I. O.*

PRELIMINARY STATEMENT

On August 4, 1943, the dispute between Sears Roebuck Co. of Minneapolis and the International Longshoremen's and Warehousemen's Union, Local 214, Congress of Industrial Organizations, involving some 1,100 employees of the company in Minneapolis, was certified to the Board by the United States Conciliation Service as a dispute which might lead to substantial interference with the war effort within the meaning of section 7 of the War Labor Disputes Act. The issues included union security provisions, grievance procedure and arbitration.

The company refused to bargain with the Union, expressing its belief that a rival American Federation of Labor union represented a majority of the employees. On August 30, 1943, the National War Labor Board, by unanimous vote, accepted jurisdiction and referred the case to the regional war labor board for the sixth region.

It was the duty of the regional board either to decide the issues in dispute, or, if it found facts not previously before the National War Labor Board indicating a lack of jurisdiction, to certify back to the National Board the question of jurisdiction with appropriate findings and recommendations.

The regional board, after considering the report of a panel on some of the issues, dismissed the case for lack of jurisdiction on the ground that the company's refusal to bargain was an issue determinable only by the National Labor Relations Board, and that the other questions in dispute should await the determination of that issue. The regional board was correct in holding that refusal to bargain presents an issue which is determinable only by the National Labor Relations Board. The National War Labor Board, however, has not only the power but the duty under the War Labor Disputes Act to provide, in the case of disputes properly certified to it by the United States Conciliation Service, the terms and conditions of employment which shall govern the relationships between the parties.

Accordingly, the Board hereby orders as follows:

DIRECTIVE ORDER

1. The case is referred back to the sixth regional war labor board for further panel hearings, and for a public hearing before the regional board on the original and the subsequent panel reports; provided, however, that if either the company or another union petitions the National Labor Relations Board for an election and so informs the regional board, the proceedings will be stayed until the petition is acted upon, and, if the petition is granted, until the certification of a collective bargaining agent is made. If the petition is denied or if it is granted, an election is held, and the International Longshoremen's and Warehousemen's Union, Local 214, is certified, the processing of the case will at once be resumed. If another union, or no union, is certified the proceedings will be dismissed.

2. In taking jurisdiction the National War Labor Board is merely exercising its authority under the War Labor Disputes Act to fix the terms and conditions of employment and is not undertaking to order the company to bargain collectively. The provision for a stay if a petition is filed has been directed in the light of the particular circumstances and is not to be taken as creating a general precedent.

Representing the public:

WILLIAM H. DAVIS.
GEORGE W. TAYLOR.
LLOYD K. GARRISON.
EDWIN E. WITTE.

Representing industry:

GEORGE H. MEAD.
VINCENT P. AHEARN.
WALTER T. MARGETTS.
CLARENCE SKINNER.

Representing labor:

DELMOND GARST.
JOHN BROPHY.
ROBERT J. WATT.
JAMES BROWNLOW.

EXECUTIVE ORDER No. 9017

ESTABLISHMENT OF THE NATIONAL WAR LABOR BOARD

WHEREAS by reason of the state of war declared to exist by joint resolutions of the Congress, approved December 8, 1941, and December 11, 1941, respectively (Public Laws Nos. 328, 331, 332, 77th Congress), the national interest demands that there shall be no interruption of any work which contributes to the effective prosecution of the war; and

WHEREAS as a result of a conference of representatives of labor and industry which met at the call of the President on December 17, 1941, it has been agreed

that for the duration of the war there shall be no strikes or lockouts, and that all labor disputes shall be settled by peaceful means, and that a National War Labor Board be established for the peaceful adjustment of such disputes:

Now, THEREFORE, by virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered:

1. There is hereby created in the Office for Emergency Management a National War Labor Board, hereinafter referred to as the Board. The Board shall be composed of twelve special commissioners to be appointed by the President. Four of the members shall be representative of the public; four shall be representative of employees; and four shall be representative of employers. The President shall designate the Chairman and Vice Chairman of the Board from the members representing the public. The President shall appoint four alternate members representative of employees and four representatives of employers, to serve as Board members in the absence of regular members representative of their respective groups. Six members or alternate members of the Board, including not less than two members from each of the groups represented on the Board, shall constitute a quorum. A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board.

2. This Order does not apply to labor disputes for which procedures for adjustment or settlement are otherwise provided until those procedures have been exhausted.

3. The procedures for adjusting and settling labor disputes which might interrupt work which contributes to the effective prosecution of the war shall be as follows: (a) The parties shall first resort to direct negotiations or to the procedures provided in a collective bargaining agreement. (b) If not settled in this manner, the Commissioners of Conciliation of the Department of Labor shall be notified if they have not already intervened in the dispute. (c) If not promptly settled by conciliation, the Secretary of Labor shall certify the dispute to the Board, provided, however, that the Board in its discretion after consultation with the Secretary may take jurisdiction of the dispute on its own motion. After it takes jurisdiction the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

4. The Board shall have power to promulgate rules and regulations appropriate for the performance of its duties.

5. The members of the Board (including alternates) shall receive necessary traveling expenses, and, unless their compensation is otherwise prescribed by the President, shall receive in addition to traveling expenses \$25.00 per diem for subsistence expense on such days as they are actually engaged in the performance of duties pursuant to this Order. The Board is authorized to appoint and fix the compensation of its officers, examiners, mediators, umpires, and arbitrators; and the Chairman is authorized to appoint and fix the compensation of other necessary employees of the Board. The Board shall avail itself, insofar as practicable, of the services and facilities of the Office for Emergency Management and of other departments and agencies of the Government.

6. Upon the appointment of the Board and the designation of its Chairman, the National Defense Mediation Board established by Executive Order No. 8716 of March 19, 1941, shall cease to exist. All employees of the National Defense Mediation Board shall be transferred to the Board without acquiring by such transfer any change in grade or civil service status. All records, papers, and property, and all unexpended funds and appropriations for the use and maintenance of the National Defense Mediation Board shall be transferred to the Board. All duties with respect to cases certified to the National Defense Mediation Board shall be assumed by the Board for discharge under the provisions of this Order.

7. Nothing herein shall be construed as superseding or in conflict with the provisions of the Railway Labor Act (Act of May 20, 1926, as amended, 44 Stat. 577; 48 Stat. 926, 1185; 49 Stat. 1169; 45 U. S. Code 151), the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 457; 29 U. S. Code 151 et seq.), the Fair Labor Standards Act (Act of June 25, 1938, 52 Stat. 1060; 29 U. S. Code 201 et seq.) and the Act to provide conditions for the purchase of supplies, etc., approved June 30, 1936 (49 Stat. 2036; 41 U. S. Code, sections 35-45), or the Act amending the Act of March 3, 1931, relating to the rate of wages for laborers and mechanics, approved August 30, 1935 (49 Stat 1011; 40 U. S. Code, Section 276 et seq.)

THE WHITE HOUSE,
January 12, 1942.

FRANKLIN D. ROOSEVELT.

AMENDING EXECUTIVE ORDER NO. 9017 OF JANUARY 12, 1942, TO PROVIDE FOR THE APPOINTMENT OF ASSOCIATE MEMBERS OF THE NATIONAL WAR LABOR BOARD

By virtue of the authority vested in me by the Constitution and the statutes of the United States, it is hereby ordered that Executive Order No. 9017 of January 12, 1942, entitled "Establishment of the National War Labor Board," be, and it is hereby, amended so as to provide for the appointment of associate members of the National War Labor Board. Such associate members shall be authorized to act as Mediators in any labor dispute pursuant to the direction of the Board.

Associate members shall receive compensation and expenses during any period of service in like manner as regular members of the Board.

FRANKLIN D. ROOSEVELT.

The WHITE HOUSE,
January 24, 1942.

EXECUTIVE ORDER NO. 9395-A

AMENDING EXECUTIVE ORDER NO. 9017 OF JANUARY 12, 1942, TO PROVIDE FOR ALTERNATE PUBLIC MEMBERS OF THE NATIONAL WAR LABOR BOARD

By virtue of the authority vested in me by the Constitution and the statutes of the United States, it is ordered that Executive Order No. 9017 of January 12, 1942, entitled "Establishment of the National War Labor Board," as amended by Executive Order No. 9038 of January 24, 1942, be, and it is hereby further amended so as to provide for the appointment by the President, for such periods of service as he may prescribe, of alternate public members of the National War Labor Board: Provided, that not more than four alternate public members shall hold office at any one time. Such alternate public members shall receive salaries at the rate of \$9,000 each per annum, and shall perform such functions as the National War Labor Board may prescribe. When called upon by the Board, they shall sit as voting members of the Board; but not more than four public members, regular or alternate, shall vote in any one case.

FRANKLIN D. ROOSEVELT.

The WHITE HOUSE,
November 20, 1943.

ADDRESS OF REPRESENTATIVE FOREST A. HARNES (R) INDIANA (MEMBER OF THE CONFERENCE COMMITTEE OF THE HOUSE AND SENATE ON THE WAR LABOR DISPUTES ACT) IN THE HOUSE OF REPRESENTATIVES, FRIDAY, JUNE 11, 1943

Mr. Speaker, your conferees, seeking to compromise the diversities between the Senate measure, S. 796, and the House substitute, enacted here just a week ago, have returned a proposal which I believe is the most effective solution which could be reached under the circumstances. It is, in my opinion, a far less satisfactory and effective proposal than the House measure, for it omits a House provision which I still believe to be most helpful and constructive. Worse, it retains the principal Senate provisions validating property seizure in case of strike or work stoppage. I have steadfastly maintained, and I still insist, that the forcible seizure of property is utterly no solution of the basic problems which lead to labor unrest. This is merely more arbitrary power added to authority already vested in the Executive to deal in a purely personal way in labor relations, and the record certainly is sufficiently clear that administrative law written at the whim and fancy of an individual simply will not work.

Even more vigorously, I have insisted that Congress could scarcely do more in a single act to jeopardize the American system of free enterprise and the Constitutional rights of the individual than to endorse this principle of property seizure by an all-powerful Executive. I could not in good conscience, therefore, support this measure offered by the conference committee unless I sincerely believed that in endorsing property seizure we have safely limited and restrained the authority of the Executive by several provisions of this proposal.

First, this conference committee bill provides that property taken under this authority shall be returned to its private owners within a period not to exceed 60 days after normal production in the property has been restored. I wish here that the phraseology might have been more specific, for as the provision is now

written, the determination of the date on which normal production is resumed is left largely with the President. The owner of any property seized may, of course, seek the protection of the courts if the Executive is deemed to be delaying unduly the return of the property. Still, the very vagueness of the language in this instance might conceivably defeat the purpose the conferees had in mind, for a socialist-minded leadership, or a very small minority of trouble-makers, bent on holding a plant or an industry in Federal bondage once it has been seized, might cause petty disturbances, press petty issues and hamper production almost endlessly. Likewise, those powerful forces within this administration which will never cease their drive to remodel the American economy on the lines of national socialism will find it easy to interpret the language of this provision to suit their own convenience.

Your conferees, however, have added another important safeguard in section 10, which provides that this act shall cease to be effective at the end of 6 months following the termination of hostilities in the present war, as proclaimed by the President, or upon the date (prior to the date of such proclamation) of the passage of a concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to be effective.

Under this provision, of course, it shall remain the prerogative of Congress to withdraw this extraordinary authority from the President any time it may be shown that the authority is being abused. This is a real protection which I confidently believe this or any future Congress will jealously guard and promptly exercise if the occasion should ever demand.

But most important of all the safeguards provided in this measure are those provisions by which we confidently rest the responsibility for labor harmony and the future safety of free enterprise squarely in the hands of the men and women in the ranks of labor. I have every confidence that these provisions will prove effective when the rank and file of American labor come to understand that we are at once placing tremendous responsibility in their hands and giving them the important beginnings of law which will restore to them the control over their own destinies within labor organizations.

I would like to speak again here about the tremendous responsibilities which will rest with the men and women of labor if this conference measure becomes law, for I believe it cannot be stated too often or with too much emphasis that property seizure is a real and immediate danger to labor. American labor has been bombarded by Communist and Socialist propaganda which always argues otherwise, but if there is any doubt in the mind of any working man on this point, he needs only to look to any totalitarian nation he cares to take as an example to see how labor fares under a dictatorial government. In fact, he can see his own future status clearly defined if he will go no further than the arguments of the proponents of property seizure, who have made it perfectly clear in this instance that they consider this instrument a quick and effective way of crushing out labor troubles.

There is also another small group which contends that this has been, and is, a labor-coddling Government and that in the hands of this President the right to seize property will prove to be no effective means of suppressing labor disturbances. To those it must be pointed out that every concession this administration has made to labor has been in return for political guaranties which labor leadership has so far been willing to offer.

Granted that under these circumstances property seizure will be more nearly a means of destroying private industry than of ending labor troubles under this administration, at least so long as labor leadership is willing to give the blind political obedience expected of it. Let us even assume that there will never be a rift in the relations of labor leadership and this administration; and that labor could be duped into enthusiastic support of a program that would inevitably weaken or destroy private initiative and free enterprise in America. What a mess of pottage indeed would be the temporary privileges and immunities for which labor had traded its previous birthright.

But of more immediate concern to labor is the inescapable fact that it has no guarantee that it can always deal so successfully, even with this Executive. Suppose for any one of many possible reasons the situation changes and the President develops the same personal enmity for other union heads that he now feels for John L. Lewis. If that seems unlikely, do not forget that these two men were the closest business partners in one of the most sensationally successful promotional deals in all history. If these two men can fall into bitter controversy over the division of the profits of their partnership, remember that other lesser partnerships may come to the same end. And remember too that an unrestrained power which can grant special privileges and immunities can just as well impose hardships and injustices.

These inescapable facts are, I believe, clear to the rank and file of American labor. That is why I have such confidence in the effectiveness of the House provisions for a period of calm, judicious study of any points in dispute, followed by an orderly, protected, democratic decision by secret ballot on any threat to interrupt production.

I repeat which I have said hundreds of times before, that the average man and woman in labor is thoroughly loyal, and just as anxious as anyone else to avoid work stoppages which threaten our war effort. Given the opportunity to study the questions involved, and given full protection from violence, intimidation and compulsion by orderly election procedure and a secret ballot, I am as sure as I can ever be of anything that the American working people will emphatically put an end to strikes and labor troubles.

That is why I am perfectly willing to trust the rank and file of labor with this final responsibility, this most important restraint against property seizure. I am certain of their patriotism, and I feel sure we can trust their good judgment to resist any interference with the war effort and any attempts to destroy the American system of free enterprise.

I presume that all of the members have seen and studied the measure reported by the conference committee, and that each is conversant with the provisions. Section 1 cites the short title, which may be termed the "War Labor Disputes Act."

Section 2 merely sets forth definitions, which I believe will be found concise and complete.

Section 3 defines the powers of the President to take possession of property, and this is the heart of the Senate bill, with which I am sure all of you are familiar. This authority to seize extends quite comprehensively to any plant, mine, or facility which may be required for the war effort, or which may be useful in connection therewith; and may be exercised by the President or appropriate Government agency after the Executive finds and proclaims that an interruption of production has occurred or may occur which impedes or may impede the war effort.

This is indeed broad authority, but you will note the limitation in this section that the President must return to its owners any property seized within a period not to exceed 60 days from the date at which normal production is resumed.

Section 4 provides that in the case a property is seized, that plant, mine, or facility shall be operated under the terms and conditions of employment which were in effect at the time possession was taken.

Section 5 provides that in a property operating under Government control, either the Government agency in authority or a majority of all the persons employed in the property or their representatives may apply to the National War Labor Board for a change in wages or other terms or conditions of employment. It should be pointed out to labor that this provision somewhat reduces its bargaining rights, for here only a clear majority of the employees may carry a case to the board, whereas in an industry, in regular private operation, any recognized bargaining unit, even though it may be less than a majority in the plant, may seek relief through appeal to the board.

Section 6 provides the penalties for striking against the Government after the seizure of a property. Note that it shall be unlawful for any person (1) to coerce, influence, or conspire with another person to interfere with the operation of such property, or (2) to aid in any way with an activity interfering with the operation of such property. Any person who wilfully violates any of the provisions of this section shall be subject to a fine of not more than \$5,000, or to imprisonment for not more than 1 year, or both.

Section 7 outlines the functions and duties of the National War Labor Board. It provides that the Board shall summon for hearing both parties to a dispute where the United States Conciliation Service certifies that a dispute exists which cannot be settled by collective bargaining or conciliation. The Board is empowered also to intervene on its own motion in a case which in its opinion has become so serious that it may lead to substantial interference with the war effort.

The Board is directed to decide the disputes, and provide by order the wages and hours, and all other terms and conditions of employment within the framework of the Fair Labor Standards Act, the National Labor Relations Act, the Emergency Price Control Act of 1942, and the supplementary act of October 2, 1942.

The Board is empowered to issue subpoenas requiring the attendance of witnesses, and the production of papers, documents, and records material to the issue involved.

The Board may apply to any Federal district court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board.

This section confers jurisdiction on any such court to issue such an order.

Section 8 is the provision which I have so vigorously supported through the entire discussion and debate on this legislation. It provides that due notice must be given of any labor dispute involving a war contractor, and that no strike or interruption of production shall be permitted for a period of 30 days thereafter.

This section also provides that in case conciliation fails to resolve the dispute within this 30-day period, the National Labor Relations Board shall forthwith take a secret ballot of the employees in the plant, mine, or facility to determine whether they will permit any such interruption of war production.

This, I repeat, is the heart of the measure I offered as a substitute, and which the House enacted a week ago. It is by this section that we propose to place in the hands of the rank and file of American labor the privilege and the responsibility to decide of their own volition whether there shall be strikes or work stoppages that may threaten our war effort.

Section 9 prohibits political contributions by labor unions by a very simple amendment of the Federal Corrupt Practices Act of 1925, and assesses the same penalties for violation which presently obtain against any national bank or corporation.

Section 10 provides for the termination of the act at the end of 6 months following the termination of hostilities in the present war; or by concurrent resolution of the two Houses of Congress stating that such provisions and amendments shall cease to have effect.

Section 11 in conclusion is the customary separability provision.

I would like to point out that your conferees bring back to you the basic provisions of my substitute bill, with the exception of registration and reporting of labor organizations. To American labor I want to point out that there is not a single provision in this conference measure which weakens or destroys any basic right of any group or individual. In fact, I believe I can say in all sincerity that this restores certain rights of the individual which have been seriously encroached in recent years, for it assures again to everyone a full voice in the operation of any labor organization of which he may be a member.

I ask labor to note, too, that there is in this measure none of the drastic features of previous proposals in the House to which it raised particular objection, such as prohibitions against picketing, jurisdictional strikes, sympathy strikes, the suspension of the Norris-La Guardia Act reviving injunctions, and the penalties for violence and intimidation.

In fact, I believe the conference measure is one which all persons in America who want labor harmony and uninterrupted war production can embrace without misgivings.

The argument has been made throughout the study of this problem that these House provisions, or any provision for orderly, cooperative procedure in labor disputes specifically recognizes the right of workers to strike in wartime. I fully agree that we do, in these provisions, recognize such a basic personal right. In fact, I will always insist that this is a right of free people which we should and must admit. I know of no way to deny this basic right without descending to slave labor.

It should not be necessary to point out, for I am sure that everyone including labor understands that this or any other personal right is always a limited right, in that it may never stand above the national welfare and safety. I shall never condone the exercise of this or any other personal right in a way which might endanger national security and welfare, but I shall never admit that the American people are incapable or unwilling to subordinate their personal privileges and interests to the greater good of their Nation.

If we have any confidence in American labor at all, we certainly do not need fear the consequence of this simple recognition, for American workers with only the rarest exceptions have been, and are displaying a spirit of sacrifice of which we can all be proud. The splendid record of production through voluntary cooperation is so clear that the point admits of no argument.

All we need concern ourselves with is to give these loyal Americans the means to protect themselves from the baleful influences which are responsible for labor troubles. Give them a real, tangible, workable code of labor laws which will end administration by personal whim and fancy; enable them to make their own decisions and choose their own leaders on the basis of real labor statesmanship. When we do that we can look confidently for complete harmony and unstinted cooperation.

I want to say again I regret the fact that this legislation has been formulated in an atmosphere of emotional stress. I wish we might have made a beginning toward a real code of labor law in a more calm, deliberate, and unhurried manner. But we were faced with the stark necessities of a war emergency which demanded prompt action to insure uninterrupted production for victory.

I urge you to support this conference measure with confidence.

THINKING ALOUD
OR
THE PRESENT THOUGHTS OF ONE EMPLOYER
(By Roger D. Lapham)

FOREWORD

Being some observations expressed in a rambling fashion, and mainly written to provoke discussion and thought among the regular and associate employer members of the National War Labor Board. Later revised in the thought that others might be interested.

SUGGESTED READING

1. The lecture of Mr. William M. Leiserson (member of the National Labor Relations Board), Labor Relations and the War, delivered February 18, 1942; also the address given at Northwestern University, January 12, 1942, by Federal Judge Charles E. Wyzanski, Jr. As a public member of the now defunct National Defense Mediation Board, Judge Wyzanski's remarks carry the weight of first-hand knowledge and experience.

2. Undoubtedly, employer representatives who served on the Mediation Board will concur in almost all of Mr. Leiserson's comments and criticisms, particularly when he says (p. 12) "but any more or less permanent arbitration agency must have a set of policies and principles to guide and control its decisions or awards."

3. The Mediation Board not only refused to adopt a set of policies and principles, but by resolution declared and reaffirmed that each case was to be handled strictly on its own merits and without regard to any recommendation made in any other case. The Board refused to admit that any recommendation made created any precedent.

4. It is noteworthy that on November 11, 1941, in the *Captive Mine case*, two Congress of Industrial Organizations members filed a dissenting opinion objecting strenuously to the majority decision which had refused the United Mine Workers' demand for a closed shop because this decision was in conflict with the Bethlehem West Coast Shipyard findings made June 18, 1941, where the employer was told to give the American Federation of Labor a closed shop.

5. Both Mr. Leiserson and Judge Wyzanski doubt whether any Board such as ours can successfully combine the separate functions of mediation and arbitration. The present procedure of the War Labor Board is as follows:

(a) Panels empowered only to mediate, and failing to settle a dispute, to report facts and issues to the Board accompanied by recommendations—unanimous, or majority and minority.

(b) The Board, after hearing from the panel, or if it deems advisable, after conducting formal public hearings, to make its final determination.

Time alone will determine success or failure of this plan. But one thing is certain—to have any chance of success, the rules laid down must be strictly adhered to. Lack of proper administration has ruined many well-planned procedures.

MANAGEMENT-LABOR CONFERENCE

6. Mr. Leiserson's comments on this conference last December are very much to the point. On page 17 he says, "It was unfortunate that the conference was adjourned so hurriedly. Had it been kept in session and had the Government insisted on submitting to the conference for careful study and discussion the perplexing difficulties it was faced with because of the contrary positions and practices of labor and management, it would have resolved some problems, if not all."

However, Mr. Leiserson overlooks the fact that the conference was handicapped by the President's statement made to its members Wednesday morning,

December 17, 1941. The President said then, "The country is expecting something out of you in a hurry—I don't say by tomorrow night—but it would be a thrilling thing if we could get something out in the way of a unanimous agreement by tomorrow night, Thursday (December 18), or, at latest, by Friday night (December 19)." The conference remained in session just one more working day than the President gave it.

7. It was unfortunate the conference was headed by a moderator handicapped by a background of Mediation Board acrimony. Just a few weeks before the Board had been pretty well killed off by the hasty resignation of all its Congress of Industrial Organizations representatives, who were incensed because of the 9 to 2 decision against the union in the *Captive Mine case*. John L. Lewis at that time publicly attacked Chairman Davis, charging him with bias.

8. If the conference had had a different chairman—one of broad national reputation, and had been given reasonable time to deliberate, it might have agreed on how to treat the union shop issue.

9. On December 7, 1941—yes, December 7, 1941—John L. Lewis had won a closed-shop arbitration award from Dr. John Steelman. In theory, but not in actuality, this arbitration had been voluntarily agreed to by both parties; and in theory, but not in actuality, Dr. Steelman was supposed not to represent Government. The fact that Lewis had defied the administration and had won out, made it most unlikely that labor leadership, whether American Federation of Labor or Congress of Industrial Organizations, would agree to any new Board unless such Board was free to arbitrate the closed-shop issue.

10. Labor members of the conference vigorously opposed fixing in advance any general policies or principles for the new Board to steer by—it was to set sail without charts or instructions in the hope that somehow, somewhere, a safe harbor of industrial peace would be found. The President, in dismissing the conference on December 23, supported labor's contention that the new Board be allowed to write its own ticket.

11. Both Mr. Leiserson and Judge Wyzanski doubt the survival of the War Labor Board. All the more reason why we, representing industry, and sharing the responsibility for the Board's success or failure, should study and restudy the constructive addresses of Mr. Leiserson and Judge Wyzanski.

RECOGNITION OF LABOR'S POLITICAL STRENGTH

12. After 11 months service as an employer member, first on the old Mediation Board, then on a short-lived management-labor conference, and for the last 2 months on the new War Labor Board, I am increasingly impressed with the grave responsibility placed on the men representing the business side of the table. At best we face, and are facing, a terribly difficult task—made even more difficult because we are a group of men—some meeting each other for the first time; representing different viewpoints, different sections of the country, different industries and with different degrees of training in employer-employee relations.

13. Per contra, remember how thoroughly labor is organized and, no wonder, since the interests of labor are the sole objectives of labor representatives. There may be inter-union feuds, but when it comes to advocating or opposing matters affecting anything important to labor, all factions, American Federation of Labor, Congress of Industrial Organizations, or what not, instinctively unite. And don't forget that today the two major national labor organizations are trying to bury the hatchet and are doing their best to put down all jurisdictional disputes.

14. Will anyone deny this statement or charge exaggeration when we say that for the past 9 years we have had a labor-minded Government—with all three branches more partial to labor than to industry?

15. A few months ago a powerful labor leader defied the administration in a way that shocked all thinking citizens and, by such defiance, got what he demanded. Had any "captain of industry" acted as John L. Lewis did, some way would have been found to jail him for contempt and the country would have applauded. This is mentioned only to emphasize how strong a political influence labor wields. Today, the President has a group of six labor leaders (three American Federation of Labor and three Congress of Industrial Organizations) consulting and advising with him on matters of vital importance to industry as well as to labor (and incidentally, not primarily, to the entire country). But, it is worth noting, that there is no similar group acting in like capacity for business.

SUGGESTED ORGANIZATION OF MANAGEMENT REPRESENTATIVES

16. But enough of wailing. Let's get down to practicalities. If the labor side of the table is organized, why not learn the lesson and go one better? I suggest that the eight employer members and alternates:

(a) Appoint a rotating chairman to serve continuously for say, a month, and to be succeeded by another member who will carry on the next month, and so on. The chairman's job to be something like the whip of a political party—to keep track of what is going on—to make sure there are sufficient employer members available at the right time and, generally, to supervise employer representation during his trick at the wheel. The chairman (or some designated employer member) should also hold himself ready to consult and advise with employers who are or may be called to Washington in connection with labor disputes certified or about to be certified to the War Labor Board.

(b) Appoint a permanent secretary for the management group whose job will be not only secretarial but will include assistance in preparing majority or minority opinions. (Note—This may require some legal advice.) This secretary should have all necessary clerical help.

(c) Schedule regular conferences of employer members at least one evening a week, say, every Monday night, which meeting should include associate and special mediator members. In short, use every means to get the management bunch to know each other, encouraging them to exchange views but not expecting them to think alike or to be bound by any caucus rule.

(d) Ask every regular or alternate employer member to remain continuously in Washington for at least a few weeks at a time. It is obvious that when a member serves only 3 days or less a week and jumps back and forth between his home or business and Washington, that with such staggered attendance, he cannot do justice to a job, the importance of which demands, if possible, continuous attendance (24 hours a day would not be too much). Management on the War Labor Board should be represented by top-side executives who have had broad training in business and whose contacts are not narrow. Of course, first-hand experience in dealing with labor difficulties makes any business executive more valuable as a member of this Board. The main thing, however, is unbroken rather than staggered attendance and it would not seem unreasonable to ask those members who cannot arrange their own affairs so as to give at least 2 weeks of continuous service to step aside in favor of those who can. This does not mean that a member should not take or, for that matter, be required to take, leave from Washington if he is to give his best to this ever present problem of human relations. One must step out of the treadmill every now and then to maintain his perspective.

(e) Ask advice from industry leaders and experts of national standing on such broad matters as a wage policy, etc. The idea would be to have a group of volunteer consultants behind the front lines. Board members will have their hands full with the daily run of current problems.

17. To learn from the past, I quote from a recent letter from an employer who took a prominent part in the deliberations which resulted in the organization of the War Labor Board in 1918:

"I venture one further consideration respecting the nature of service by employers upon any War Labor Board that may be established. The experience of the last war was that such service made tremendous demands upon time and energy. I know it was necessary for the employer members to live together in a house rented for that purpose in Washington, that Mr. Taft moved from New Haven to this city, that employer members found that even with the use of alternates that they lived upon trains as the number of cases increased and the numerous personal difficulties multiplied. There were, as I recall it, 104 days of executive sessions during a single year, exclusive of public and group sessions. For the labor members it was, of course, a part of their daily work. For the employers charged with heavy executive responsibilities, it became increasingly difficult as their managerial responsibilities increased. Alternates will be vitally important, and they should be equally empowered with authority with their principals so that time required may be divided as occasion arises. Also ample clerical and stenographic assistance will become vital as was found in the last War Labor Board. So that it will be very important that consideration should be given to the executive responsibilities of employers who may be asked to serve on any board created. The service will also often be exatious and irritating. Sometimes it was made so during the last war. That may be a condition that is not to be overlooked."

THE GROUP INDUSTRY IDEA

18. To the employer members of this Board the sheer necessity of organization and unity is being brought home increasingly day by day. Yet, how long will it take management to realize that when labor organizes on an industry-wide basis, it is time for management to follow suit—and that unless there is equal strength on both sides of the bargaining table, a one-sided deal results. It is astonishing that most company executives fail to recognize, let alone heed, this simple fact; how the most blind appear to be some big employers in the most important industries who place their individual or company aims ahead of the broader industry interest.

There are signs of awakening which may be accelerated as the war lengthens: Stockholders as American citizens may begin to demand of their management servants in aircraft, steel, oil, or any other industry, group cooperation working to solve the labor status peculiar to each group rather than unorganized individual effort. Divide and rule has been practiced by labor; unite and serve should be the goal of industry.

And, surely, team play within industry will enable it to deal more effectively with post-war dangers—provided we first settle the totalitarian powers "affairs."

THE BATTLE OF COMPLACENCY

19. But get behind me, Jeremiah. The big question is, "Where do we go from here?" and more particularly, "What should the employer members of the War Labor Board do?" "What should and can be their contribution to the cause of production?"

20. I will not believe it is possible for the United States to lose this war. We have had reverses in the Far East and elsewhere with no present sign that the tide is turning. To win the war, the country must awake to the realization that we are in a struggle for existence and that while that struggle lasts, we had better forego talking about principles or private enterprise and even freedom of individual action. For, if we do not win this war, will not our way of life be the one prescribed by Hitler or the Son of Heaven or both?

21. Management has just one job to do in war—production and service, and anything which impedes service or decreases production or fails to produce the maximum production cannot be tolerated. Nothing else matters provided we are convinced our national existence is at stake.

22. No one can deny that cooperation of the closest kind between management and labor is vital if we are to attain our maximum productive effort—the problem is, how to reach that goal.

23. But now to something more important than organization or machinery, the mental attitude of management. How essential it is that business executives (who, after all, are supposed to have the brains of production) adjust themselves to the conviction that the war must be won despite the obstacles which exist within our own boundaries.

We must accept Government as it is, not as we might wish it to be. The weaknesses of democracy are always exposed in time of war. The dictators get off to a flying start, and the slow-moving democracies have a long stern chase. To win a war requires team play—voluntary team play preferred. But discipline and cooperation are required in the first line of offense. Why not then in the second line, the line of production and service.

24. We still have restrictive antitrust laws and judicial decisions which threaten management if it cooperates on an industry-wide basis. We now indict individuals and companies for violation of antitrust statutes because of actions taken years ago. This hinders the task of today and creates feelings of uncertainty and bitterness. Yet Government is not ready to remove this threat, even though cooperation of business is demanded by all except the Attorney General.

MAKE UP YOUR OWN MIND

25. Business is always inclined to blame Government. Why doesn't the President advocate a national wage policy? Or advocate this or that? We are looking to Mr. Henderson or Mr. Nelson, or someone else to do the leading.

26. As an employer representative of this Board, I feel it is this Board's duty to go ahead and establish a national wage policy as well as a policy with respect to the closed shop or any modification thereof. If we are called off by higher

authority or if Congress chooses to carry the ball, itself, why, that's that. But in the meantime, let us go ahead, saw wood, and do something.
Vide Deuteronomy 1, verses 16-17:

And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.

THE WAGE QUESTION

27. There are two main issues this Board must deal with in the very near future: wages and union status. I shall not attempt to deal at length with wages here—much has been said about a national wage policy. Whether this Board can or will write one or not remains to be seen. To the lay mind, if we are to have price control—it would seem as if wages which figure largely in costs must also have some measure of control—and taxes, too, surely must figure in the picture.

Perhaps something like the following might be adopted as an appropriate wage policy:

1. There should be no further general increase in wages based on an increased cost of living or additional taxes. We cannot, as a Nation, continue the standard of living to which we were accustomed. We are at war!

2. There should be an adjustment of wages to meet prevailing average wages for like jobs in a given community, for like jobs in a competitive industry in a comparable community, or in the lowest paid classifications if cost-of-living increases should be so rapid as to work a hardship measured by the amount in the weekly pay envelope of such groups.

3. Premium or overtime payments for time worked should be at the rate of one and one-half times the regular rate and should apply only to hours worked in excess of the hours which may be compensated at the regular rate under Federal statutes, irrespective of the day of the week, provided that where an employee is required to work 7 consecutive days, he should be paid double time for the seventh day or any part thereof.

UNION STATUS

28. As to union status, this should be a simpler issue than wages for which to find a solution. Yet, the truth is, of the two, it is the more troublesome because neither management nor labor seems able to discuss it without an emotional pounding of the table.

The Executive order creating this Board really establishes a court of compulsory arbitration. The order provides that "after it takes jurisdiction, the Board shall finally determine the dispute." But the order leaves to the Board its own methods of determination. There has been some talk that final determination of some issues might be left to parties appointed by the Board. To do so would seem to be an evasion of responsibility. The conclusion is inescapable that the Board, being charged with the duty of final determination, cannot pass on to any other party its own obligation.

Under normal conditions, we can expect that every labor leader will seek a closed shop, or as near to it as he can get, and that every employer will endeavor to retain as much as he can of his freedom of hiring and firing. The employer is now compelled by law to deal with the legal collective bargaining agency of his employees, and certainly there is now no sign of any demand to change this part of the Wagner Act. Employers are not only expected to observe the law, but should be meticulous in dealing fairly and without reservation with whomever the legal collective bargaining agent is, whether the agent be saint or devil.

29. It may be argued that no labor leader or organization should take advantage of the emergency to force greater concessions in the form of union security than an employer is willing to give. But the unions insist that inasmuch as they have willingly abandoned for the war period their right to strike, that the employers should not take advantage in seeking to weaken existing union organizations.

30. But let us stop and think—neither labor or industry wears the uniform—but, to repeat, they are the second line of offense and just as vital to the country as are the men on the far-flung battle line. Neither industry nor labor can or will fail their brothers in uniform.

31. Employers will admit their obligation to continue during the emergency such union security relations as already prevail in existing labor contracts. Where there is a union shop, it must remain a union shop, and where maintenance of membership is required, such must continue for the war period.

32. The question now arises, if the employer has recognized a union as the proper collective bargaining agency, how far and to what extent should he be compelled by a Government, such as the War Labor Board, to grant a closed shop or any modification thereof? It is admitted, of course, that the employer is free to grant voluntarily and the union is free to ask for a closed shop or any form thereof, provided no economic coercion of any kind—secondary boycott or hot cargo—is used (as per acceptance of President's letter, December 23, 1941). It seems axiomatic that Government will not compel a closed shop.

THE CLOSED SHOP AND MODIFICATIONS THEREOF

33. On November 13, 1941, the President said: "I tell you frankly that the Government of the United States will not order, nor will Congress pass legislation ordering a so-called closed shop. * * * The Government will never compel this 5 percent (the nonunion employees of the captive coal mine industry) to join the union by a Government decree. That would be too much like Hitler's methods toward labor." It is unbelievable that this Board would ever make a final determination compelling an employer to force an employee to join a union in order to secure or hold a national defense job. The final result in the captive coal mine case contradicts this statement; but remember the excuse, however flimsy, was that that decision was the result of voluntary arbitration. John L. Lewis has characterized the November 13 statement of the President, quoted above, obsolete. But the plain words of the President have never been contradicted at the source.

34. Some argue that once a Labor Board election is held and a certain union wins and is designated the sole collective bargaining agency, then every one in the plant who voted for that agency is under obligation to support it. Therefore, if union and management agree that all members of the union thereafter must remain members in good standing or, otherwise, be discharged, there can be nothing unfair in such a procedure—for inasmuch as once a man has selected his agency, he should be compelled to stick with it for at least until the expiration of the existing labor agreement.

35. Others feel this is asking too much; that no maintenance-of-membership clause should be granted by an employer to a union unless, after the agreement with the union is entered into, the individual employee voluntarily authorizes the employer to discharge him if he fails to maintain in good standing membership in his union. (Note: Some definition of good standing is always desirable. Ordinarily, it means payment of regular dues. Whether it should include payment of assessments or fines is debatable.)

COMPULSION AND PERSUASION

36. The difference between compulsion and persuasion can be as wide or narrow as the distance between the banks of the Amazon and a 2-foot brook. In either case there is always water between the banks. For Government to compel a management-union relationship, whether closed shop, union shop, or frozen membership, is in my opinion unwise for both union and management. What Government gives, Government can take away. The union, by accepting membership through compulsion will inevitably invite more Government control and regulation. Government fixing of employer-employee relations should be and is resented by industry. And in these days when Government is demanding that management produce the maximum, why give management any excuse for failure to produce because Government prescribes some employer-employee relationship which is not specifically required by law.

37. Because of the late mediation board's action in compelling certain union-management relationships, such as in the Bethlehem Shipyard, North American, and Federal Shipyard disputes, and because John L. Lewis successfully defied the Federal Government, there has been built up in the past 9 months much bitter feeling on the closed-shop issue. The public knows it was not the intent of the Wagner Act to force closed shop on employers, and a study of the hearings and debates prior to the passage of the Wagner Act confirms this; that union leaders in their grasp for power and taking advantage of the increasing demand for work due to the emergency have been aided and abetted by Government in getting more than what they were entitled to, not only in union security but in other ways,

and there is much justification for the assertion that unions have been able to blackmail management into payment of higher wages by demanding at the bargaining table a closed shop.

These emotional feelings on the union shop question boiled over during the labor-management conference held last December. All the more reason why the present emergency calls for a cooling-off period and more objective thinking on both sides of the management-labor table. To bring this about is easier said than done, but, if the spirit is willing—and God knows it should be—the flesh ought not to be weak.

THE TWO EXTREMES

38. What now is the status of the so-called union security issue?

On one side—the emphatic and vociferous statements of union leaders that they must have union-shop provisions in all labor contracts. They demand this Board rule, whether management agrees or not, that every man must join a union to hold a national defense job. This they ask for the security of their unions mainly because they profess to be afraid of antiunion activities of employers. They dwell not only on what they say were the antiunion practices in some industries a few years ago but even go back to antiunion employers' records 10, 20, or 30 years ago. They assume, despite the recent gains of labor through legislation, such as the National Labor Relations Act, as well as through administrative action partial to labor, that union existence is threatened today, or if not today, will be tomorrow and so they seek what they call further protection, not through legislative channels, but by rulings of a board created by Executive order.

39. Union leadership has consistently opposed any legislation tending to regulate any abuse of union power. It has even opposed such moderate legislative action as requiring unions to live in glass houses—in some such way as corporations have been more and more compelled to do. Union leadership still objects officially to compulsory registration with some Federal agency and the filing of union bylaws, constitutions, etc., as well as sworn and audited financial reports. It continues to insist upon power without responsibility.

40. Unquestionably, most labor leaders of vision must realize the danger of reaction to union excesses. Two hours after Dr. John Steelman awarded John L. Lewis a closed-shop in the *Captive Mine case* Pearl Harbor was attacked. If that attack had been postponed 1 month the reaction of the Nation to the successful defiance of Government by John L. Lewis would have been most damaging to the cause of labor. The war is the newspaper headline of the day. The no-strike, no-lock-out promise, and everything to be settled by peaceful means is the formula which the country expects management and labor to adhere to. The party who fails to follow that formula will incur resentment all the stronger because it has been suppressed since December 7, 1941.

41. *On the other side.*—We have those employers who haven't any closed shop, union shop, or other form of union security contracts loudly insisting that they will not give a union any more than they are obliged to under the Wagner Act. They ask that Congress freeze the closed-shop issue, and henceforth forbid an employer from entering into any sort of a closed-shop contract or modification thereof, whether an employer be willing to do so or not. There still are employers who even now resist dealing with their employees through collective bargaining agents—some who do not wish to treat with any union at all, and others who want to pick the right union to deal with. Such employers use every legal device to prevent the selection of a bargaining agent.

42. Many employers insist that union leaders and organizers do not really represent the great majority of their workers. They say the minority dominates the majority (and historical precedents can be found) and apparently would like to name, themselves, just who should speak for their workers. Whatever complaint there might be about the few running the mass, the fact is those employers who "kick against the pricks" are not willing to face reality. They cannot swallow the fact they have to deal with whoever may be the spokesman for their workers whether he became so by merit or fraud. They will not concede their workers should run their own show and that if unscrupulous and dishonest leaders control, they must remain in control until kicked out by the men below.

[NOTE.—It is known that union elections have sometimes not been conducted honestly. But the remedy lies through legislative action. There are laws governing election of corporation directors, etc. Maybe the rank and file of union members should have legal protection against the improper acts of their officers in the same way as stockholders have.]

43. So, here we have two extreme positions. What can and should this Board do to bring these two extremes toward the center—always keeping in mind in order to secure maximum production or service, there must be the closest kind of cooperation between management and workers if we are to win this war—this battle for national existence?

AN IMPORTANT ASIDE

44. A thoughtful inventory of our present national labor situation sums up as follows:

The American Federation of Labor and Congress of Industrial Organizations have agreed with the President there shall be no stoppages of work during the war. The Nation expects and will demand that this pledge be carried out. If Government puts some ceiling on wages—a policy advocated today by a large sector of the American public and by some Government agencies and many Members of Congress, then should we not think of the situation in which leaders of organized labor find themselves? With the right to strike eliminated and the wage level limited by Government, how are these leaders to retain their members? The overhead expense of these large national labor unions is substantial. Their revenue flows only from their membership. Can union leaders be held accountable for labor troubles if, because of a falling off in their membership, they find they control a minority rather than a majority in the plants where they are the bargaining agents?

45. If one is realistic, it is hard to reconcile the views of those in management who wish to hold union leaders responsible for more stable labor relations and yet who will not help them, in some practical way, to attain responsibility.

THE CONTROLLING THIRD OF THE BOARD

46. We must not forget the make-up of the War Labor Board; four members representing labor, four representing management, and four representing the public, each member with one vote. It is reasonable to expect the votes of the four public members will determine the Board policy with respect to this troublesome union security issue. It is a sure bet the four public members will be unanimous in attempting to find a middle ground between the extreme employer position of refusing to give more than required by law and the extreme union position that every worker on national defense must belong to a union. The four public members all hold what business terms liberal views. They believe in collective bargaining and hope for more responsible union leadership, as well as a more broad-minded industry viewpoint. They look forward to a more universal acceptance of such management union relationships which have existed in England as well as in the Scandinavian countries.

THE CONTROLLING THIRD; WHAT DOES IT THINK?

47. Believing in the democratic processes, it is most unlikely that the four public members will compel an employer to impose upon an employee union membership.

48. Will they advocate the so-called frozen membership clause, as the Mediation Board did in the North American and the Federal Shipyard cases. The clause in the latter case—made famous by the refusal of the company to accept it and the subsequent taking over and operation of the yard by the Navy, read as follows:

"In view of the joint responsibilities of the parties to the national defense, of their mutual obligations to maintain production during the present emergency and of their reciprocal guaranties that there shall be no strikes or lock-outs for a period of 2 years from June 23, 1941, as set out in the Atlantic Coast Zone Standards, incorporated herein and made a part hereof, the company engages on its part that any employee who is now a member of the union, or who hereafter voluntarily becomes a member during the life of the agreement, shall, as a condition of continued employment, maintain membership in the union in good standing."

49. What happened? During the 4 months or more it operated the plant, the Navy never enforced this clause. As an employer, the Navy refused to do what the mediation board said a private employer should do.

50. It will be noted the mediation board required the company to discharge a union worker for failure to "maintain membership in the union in good standing." Thus, the mediation board refused the individual who was a union member at the time the opportunity to say whether this requirement of a labor contract, which directly affected him, met with his approval or not.

51. Our understanding is that when the Navy, early last January, returned the Federal shipyard to its owners—presumably because for national defense reasons

it seemed the wise thing to do—it did so without imposing upon the owner any conditions as to the union status of the workers. At present this shipyard at Kearney, N. J., is being operated without a written labor contract, although the conditions negotiated with the union last summer, prior to Government seizure of the yard, are now in effect.

52. Will the public members of the War Labor Board advocate as a final determination of the Board that an employer impose upon his employees what the mediation board asked employers to do in the North American and in the famous Federal shipyard cases.

Viewed realistically, as well as historically, such a final determination would play havoc.

GUESSING AT A FINAL DETERMINATION

53. In the event management and union cannot agree on the issue of union status, the Board's four public members seeking a compromise may urge something like this—

If an employee voluntarily tells his employer that he is a member of a union and wants to retain his union membership for the life of a particular labor contract, then it is proper to require that management and union write into that contract some clause to bind those workers who are willing to be bound. To emphasize, an employer will be asked to discharge an employee for failure to maintain good membership standing in his union, provided, that after a labor contract is entered into, the employee notifies his employer that he intends to remain a member of the union for a specified period and understands that if he does not do so he is subject to discharge.

54. The argument will be made that if management really wants to deal with the union in good faith, it should concede that if responsibility is expected of union leadership, such leadership must have membership support. Therefore, management should say to its employees, who have voluntarily bound themselves to union membership, "Why, we expect you to pay your union dues just as you would pay your grocer's bill, and if you fail to do so, you are not the kind of man we want to keep on our pay roll."

55. Different kinds of clauses can be drawn up to cover the general idea outlined in paragraph 53.

One can be classed as the voluntary irrevocable check-off clause, such as is included in the recent labor contract between Marshall Field & Co. and the Textile Workers Union of America, Congress of Industrial Organizations, covering the workers at the Marshall Field plant at Spray, N. C.

"All employees who are now members of the union or who may in the future become members will be required as a condition of employment with the company to maintain their membership in good standing during the life of this contract: Provided, that this provision shall apply only to employees who, after the consummation of this agreement, individually and voluntarily certify in writing that they authorize union dues deductions, and will, as a condition of employment, maintain their membership in the union in good standing during the life of the contract. Upon receipt of the above authorization, the mill agrees to deduct from the weekly earnings union dues in the amount of 25 cents per week, to be paid to the union."

56. There is also the voluntary, revocable check-off clause, similar to the Marshall Field clause, but permitting an employee on due notice to tell his employer to cease paying his union dues. And there can be variations such as the voluntary, limited revocable check-off clause, reading as follows:

"Upon receipt of written authorization from him or her, the company shall deduct from each old or new employee dues in the amount of 25 cents per week to be paid to the local union. An employee may revoke this authorization only by giving 30 days written notice to both the company and the union and only upon the basis of a legitimate reason not related to wages, hours, and conditions of employment. If there is a dispute as to whether the reasons are legitimate, the company shall not be a party to the dispute, but the employee or employees affected and the union shall, if they are unable to agree on a method of settling the issue among themselves, refer it to a person to be nominated by _____. The decision of the arbiter shall be final and binding, and a copy of the decision shall be sent to the company and the parties involved."

57. Most employers will object to a check-off, whether voluntary or not, because they feel collection of dues is a function of union and not of management. There is much merit in this contention, because if a union wants to really run its own show, it should not lean upon management as a bill collector. For those objecting to the check-off, a clause such as follows might be used:

UNION SECURITY

"The parties agree that if the employees who are now members or who become members of the union signify they will remain members in good standing during the life of this agreement, they shall remain members in good standing in the union during the life of this agreement as a condition of employment. The provisions of this paragraph shall only apply to employees who sign cards at a date subsequent to the execution of this agreement which contain a statement by the individual employee that he is a member of the union and that he will remain a member of the union in good standing during the life of this agreement as a condition of employment. These signed cards are to be filed with the company by the employee."

"Form of card to be used:

I am a member of Local — of —, and I hereby agree that I will remain a member in good standing during the life of the contract in effect between the union and — Co. as a condition of employment."

NOTE.—It would be well to define exactly what "good standing" means.

58. Many employers object to clauses similar to those mentioned above because while in wording and theory the action of an employee in signing an authorization is voluntary, in practice it is more often involuntary. They point to the many ways in which coercion and intimidation are used to compel union membership—not only by violent means, but by threats of all varieties, including social ostracism. Words forbidding coercion do not satisfy some employers who know from actual knowledge how little provisions of this kind mean. It is, of course, difficult to police written words of any agreement. Good faith is always more effective than the written word, but the fact remains that most objections to voluntary maintenance of membership or check-off authorizations would fade out, provided management was satisfied their workers could really exercise their own free will. How to bring this about will always be a problem.

59. Here is another clause worthy of serious consideration—

"The company and the union mutually agree that, having regard to the critical national emergency, a forward step should be taken in the direction of strong, independent and well-disciplined organization of the company's employees, with the intent and purpose that the maximum value, particularly as to production, may be derived from this agreement, and that the management staff and the workers employed by the company may cooperate with mutual respect and confidence."

"In the light of these considerations and of the reciprocal guarantees that there shall be no strikes, lock-outs, or slow-downs, during the term of this agreement, the company agrees to furnish all of its present employees, and hand to each new employee when he enters upon his employment, a copy of this agreement, including the constitution and bylaws of the union, together with a notice attached reading as follows:

NOTICE TO NEW EMPLOYEES

"Your attention is called to the fact that the _____ Corporation has negotiated the attached agreement fixing the hours, wages, and working conditions of its eligible employees with Local No. —. You are advised that the company approves of its employees who choose to do so of joining and remaining for the period of this agreement a member of the union and take part in the activities of the union under its constitution and bylaws."

"The union has agreed that it will at all time admit to its membership any employee of the company of the eligible group, as defined in the agreement, on reasonable and nondiscriminatory terms and that any employee who has been refused membership for any reason, or who has been suspended or expelled from the union, may appeal his case to the executive board of the international union of the _____."

"The company has agreed with the union that neither it nor its officers, foremen, or supervisors will differentiate in any way among its employees; nor will the company, its officers, foremen, or supervisors discriminate against, interfere with, restrain, or coerce employees because of membership in, or activity on behalf of the union; nor for the presentation of any complaint, dispute, or grievance. The company has further agreed that it will not permit any organization activities of any kind on company time or property. The union has in turn agreed that neither it nor any of its officers or members will intimidate or coerce employees into membership in the union, and that it will not conduct any union activities on company time or property except as expressly provided in this agreement.

"This agreement sets forth terms and conditions of employment applicable alike to all production and maintenance employees, and the company will not recognize any other collective bargaining agent, except as required by the National Labor Relations Board, nor enter into any other agreement setting forth terms and conditions of employment for employees as herein defined, during the life of this agreement.

"The company requests that you examine this agreement carefully. For further information you are referred to the union office at —, where you can obtain the details regarding qualifications for membership, initiation fee of \$—, and the monthly dues, as well as copy of the union's latest financial statement of income and expenditures, which the union publishes annually."

It will be noted there is no suggestion of check-off or individual authorization here. It is based entirely on good faith. Maybe something like this would be the best thing to try out.

"SUPPOSING"

60. Now suppose the War Labor Board is conducting a formal hearing in a dispute where the issue is union status—the union demanding a union shop and industry refusing anything more than the law requires—what might be the position taken by industry on that occasion?

Let us assume industry had thought things over—had made up its mind that today the national existence was at stake—that maximum production and service could not be obtained without the closest cooperation with its workers—that whether it liked the general run of union leadership or not, it accepted the fact that such leadership was the recognized spokesman of its workers—that it had to admit the spokesman of labor exercised a great deal of political influence in all branches of the Federal Government.

Suppose industry adjusted itself to living in the present, rather than in the past—admitted that always saying "no" to almost everything had not produced too much success with the labor leaders of today and their political supporters—that something had to be done to work closer to the men who were the spokesmen for their workers in order that industry and labor together could do the job required for national existence. What then should be industry's course of action?

A SUGGESTION

61. Why not try this out and say to the War Labor Board (and that means the public), "We want to forget the past and start afresh. We want to ease our conscience of any charge that we are not doing and will not do what we can to bring about maximum production. We do not believe maximum production can be obtained by requiring all men who work for national defense to join a union. The President said, 'That would be too much like Hitler' and we concur. We realize the recent industrial development of the United States has resulted in the building up of larger and larger employer units, thus making it a more and more difficult task for the leaders of industry to keep close to the men down below."

Because of this development, the position of unions in the economic world of today is both natural and legitimate. We believe the rapid growth of unions in this country, fostered in a political way, has caused plenty of trouble for industry and has interfered with and restricted production to the detriment of the consumer. But we admit there has been, is, and will be chiselers in all walks of life and that unions, if we are willing to see far enough, will not only police industry chiseling, but will give the rank and file better protection against unfair treatment. Therefore, we believe our workers should join the union which represents them.

62. But, we would like to know whether union leadership, such as is represented on the labor side of the War Labor Board, would undertake to cooperate with

management and, perhaps, with the assistance of the War Labor Board itself, ask Congress for certain legislation such as—

Registration of unions, national and local.

Filing of union constitution and bylaws.

Filing of audited, sworn statements of receipts and expenditures. We think this is a reasonable request because no one can deny that racketeering exists here and there and that unions are sometimes dominated by a minority, whether for personal or political reasons. We recognize that, while it may be up to union members to run their unions and impose their own self-discipline, in practice, this is far from easy¹ and, therefore, we ask that responsible labor leaders join with us in telling Congress to impose some moderate legislation requiring unions to live in glass houses.

"If we could have such assurances, we would be glad to have the War Labor Board say to us, 'Sign a contract in which your men can voluntarily obligate themselves to union membership and we will do our best, from the chairman of the board down to the most junior foreman, to play ball with the union and go to bat to win this war in the shortest time possible.'"

A SOLUTION

63. If industry took this position, maybe the public members of the War Labor Board would gladly welcome fixing a national union security policy along the lines indicated and, while words can only be accepted as a guide to good faith, perhaps the labor members of the Board, as well as the management members, would unite with the public members in making a unanimous final determination which would serve as a guide for permanent industrial peace. Certainly, the Nation would hail any solution which would enable industry and labor to concentrate on finishing off Adolf, Benito, and the Son of Heaven.

May I close on the note that both management and labor might develop a new attitude and philosophy of life and that goes for Mr. John Q. Public, too. Suppose the 12 members of the War Labor Board had been on Wake Island when the Japs attacked, and suppose they had had to jump up from the conference table, seize what weapons they could, and fight for their lives. Then, just as the Japs were about to overwhelm them, suppose a plane had miraculously appeared and carried these 12 men to Washington. If that had really happened, we would have had real industrial peace by this time.

NATIONAL WAR LABOR BOARD,
Washington, D. C., June 14, 1944.

HON. ROBERT RAMSPECK,
Chairman, Select Committee to Investigate Montgomery Ward Seizure,
New House Office Building, Washington, D. C.

DEAR MR. RAMSPECK: At the hearing on June 7, 1944, before your committee Mr. Barr and Mr. Ball, representing Montgomery Ward & Co., made certain allegations regarding the procedure of the National War Labor Board which we wish briefly to answer as follows:

(1) Complaint that the panel in the 1942 wage dispute at Chicago refused to reveal the source of the comparative wage data which the panel had gathered.

The source could not be revealed because the companies from which the figures had been gathered with the aid of the Bureau of Labor Statistics refused to let the figures be presented except in anonymous form. The panel sustained Montgomery Ward's objections to the use of these figures as a basis for recommending a wage increase. The increase which the panel unanimously recommended, which the Board unanimously approved, and which the company put into effect, was based not on comparative wage data but on an application of the Little Steel formula.

(2) The complaint that no oaths were administered.

We know of no legal authority which requires that witnesses be sworn in an administrative proceeding. In the case of some administrative agencies Congress has expressly provided for the administration of oaths, as in the case of the Federal Communications Commission, the National Labor Relations Board, the Wage and Hour Division of the Department of Labor and others. Congress did not,

¹ International unions have often admitted inability to control their locals—"The local is autonomous; what can we do?"

however, make any such provision in the case of the War Labor Board nor did the President in any of his Executive orders. It has been held that unless the swearing of witnesses has been authorized by statute, a prosecution for perjury will not lie (*U. S. v. Curtis*, 107 U. S. 671; *Levy v. U. S.*, 271 Fed. 942). In other words, in the absence of statutory authority for the administration of oaths there is no warrant in law for the swearing of witnesses. For this reason, no doubt, Congress enacted a general statute providing a criminal penalty for any false statements, sworn or unsworn, knowingly made before any agency of the United States Government (18 U. S. C. 80). So that even without the oath it is a criminal offense to testify falsely before the War Labor Board.

(3) The complaint that there was no evidence before the Board.

This, like the complaint with regard to the absence of oaths, is a generalized complaint which Montgomery Ward has made in every one of the proceedings before the National War Labor Board. Fundamentally, what the company insists upon is a trial which would proceed exactly like an ordinary litigation in court. The War Labor Board could not, as a practical matter, handle its great volume of cases (about 500 disputes per month plus some 3,000 applications per month for wage changes) if it had to proceed with all of the formalities of the courtroom, nor would courtroom procedure be well adapted to the solution of labor controversies.

The procedure before the Board and before the regional boards and panels has always been informal and must remain so if wartime controversies are to be disposed of promptly and effectively. At the hearings representatives of the particular union and employer involved who know most about the controversy present their rival viewpoints and assertions in simple layman's language. They are freely questioned by the labor, industry, and public members of the Board or panel and by each other until the issues have been thoroughly clarified and both sides have felt that they have said all that they wish to say. Very often at this stage settlements are effected and the Board and its agents are always alert to bring about settlements at every stage of the proceedings and to refer particular issues back to the parties for further negotiations when ever there is any hope that they might ultimately reach an agreement through negotiation.

Montgomery Ward & Co. would abolish this whole procedure on the ground that assertions and arguments by the representatives of the parties are not evidence in the strict legal sense. In reality, in all but a very few of the cases which come before the Board the issues in dispute involve questions of policy rather than of fact and the factual background against which the fundamental policy judgments must be weighed is obtained with very little difficulty from the parties by the informal methods described above.

Out of the more than 6,000 disputes which have been decided by the Board and the regional boards, Montgomery Ward & Co. and the United States Gypsum Co. (of which Mr. Avery is chairman) and a few others which have followed Montgomery Ward's lead in filing lawsuits against the board, have been the only concerns which have objected to the Board's informal procedure for getting at the facts and clarifying the issues.

Informal though it is, the Board's procedure is thoroughly safeguarded by all of the requirements of due process of law as laid down by the courts. A copy of the Board's rules of procedure is attached hereto and we believe that if the committee will take the time to glance at them the committee will be well satisfied as to the truth of the assertion just made.

In all of the proceedings before the Board in which Montgomery Ward & Co. has been involved during the past 2 years the company has never asked permission to call a witness on its behalf. Had such permission been asked it would have been granted.

Under separate cover I am sending you seven copies of this letter and of the enclosures for the convenience of your committee. I also enclose, as of possible interest, a copy of Dr. Graham's recent address on maintenance of membership at the Town Meeting of the Air.

If there are any specific points raised in the testimony by Montgomery Ward & Co. before your committee which have not been satisfactorily covered either in this letter or in my testimony in behalf of the Board, we trust that you will let us know and give us an opportunity to answer any questions which may be troubling the committee.

Sincerely yours,

NATIONAL WAR LABOR BOARD,
WILLIAM H. DAVIS, *Chairman*.

NATIONAL WAR LABOR BOARD RULES OF ORGANIZATION AND PROCEDURE

TITLE 29—LABOR

CHAPTER VI—NATIONAL WAR LABOR BOARD

Part 801—Rules of Organization

(Adopted November 26 and 27, 1943, by the National War Labor Board)

Administrative Regulation No. 1 of the National War Labor Board adopted by it on January 22, 1942, as revised, is hereby rescinded and the following provisions are adopted in its stead:

§ 801.1 Definitions:

As used in Parts 801 and 802, unless the context requires otherwise:

(a) The word "member" includes a regular, alternate, or substitute member of the National War Labor Board.

(b) The term "Board" means the National War Labor Board.

(c) The term "agent" includes Regional War Labor Boards, Industry Commissions of the National War Labor Board, the Wage Adjustment Board for the Building Construction Industry, or any other agency to which the National War Labor Board has delegated, or may hereafter delegate, authority to issue, subject to review by the National War Labor Board, (1) final rulings on voluntary applications for approval of wage or salary adjustments or (2) final directive orders in dispute cases.

§ 801.2 Regional War Labor Boards.

Regional War Labor Boards as heretofore established by the Board shall continue to perform the functions set forth in "Jurisdiction and Procedure of Regional War Labor Boards" of April 15, 1943, as amended.

§ 801.3 Industry Commissions and Panels.

The industry commissions and industry panels, and any other agencies heretofore authorized to act as agents of the Board, shall continue to perform the functions assigned to them by the Board.

§ 801.4 Meetings:

The Board shall hold its regular meetings at 10:00 a. m. and 2:30 p. m. each day of the week except Sunday, unless otherwise determined in advance by the Board. Special meetings may be called at any time by the Chairman of the Board.

§ 801.5 Executive Sessions:

At its regular or special meetings, unless it otherwise determines, the Board shall conduct all its proceedings in executive session.

§ 801.6 Quorum:

Six members, including not less than two members from each of the groups represented on the Board, shall constitute a quorum thereof.

§ 801.7 Voting:

Each member shall be entitled to one vote on any matter put to a vote before the Board, provided, however, that tripartite equality of voting shall be preserved. A majority vote shall constitute the decision of the Board.

§ 801.8 The New Case Committee of the Board.

The New Case Committee shall be appointed by the Board and shall consist of two representatives of industry, two representatives of labor and either one or two representatives of the public as the Board may from time to time prescribe. The public representatives shall act as Chairmen. For a description of the functions and procedures of the New Case Committee see Section 802.1, below.

§ 801.9 The Appeals Committee of the Board:

The Appeals Committee shall be appointed by the Board and shall consist of two representatives of labor, two representatives of industry, and two public representatives who shall serve as Chairmen. The Board may establish more than one such committee. As used hereafter the term "Appeals Committee" includes any one of such committees established by the Board. For a description of the functions and procedures of the Appeals Committee see Section 802.41, below.

§ 801.10 *Joint Committee of the Board on Executive Order 9240:*

The Joint Committee shall consist of a representative appointed by the Department of Labor and a representative appointed by the Board. For a description of the functions of this committee see Section 802.9 below.

§ 801.11 *The Review Committee of the Board.*

This Committee shall be appointed by the Board and shall consist of two representatives of labor, two representatives of industry, and two public members, who shall serve as Chairmen. For a description of the functions of this Committee, see § 802.10, below.

§ 801.12 *The Post-Directive Committee of the Board.*

This Committee shall consist of one representative of industry and one representative of labor, both of whom shall be appointed by the Board, and of the Director or Assistant Director of the National Disputes Division, either of whom shall serve as Chairman of the Committee. For a description of the functions of this Committee see § 802.12 and § 802.13, below.

Part 802—Rules of Procedure

I. *Processing of Dispute Case by the National Board. (Adopted November 26 and 27, 1943, by the National War Labor Board)*

Administrative Regulation No. 2 of the National War Labor Board adopted by it on January 22, 1943, as revised, is hereby rescinded and the following provisions are adopted in its stead:

§ 802.1 *The New Case Committee. (See § 801.8, above)*(a) *Functions.*

Upon certification of a labor dispute by the U. S. Conciliation Service or upon the amendment of a prior certification, the dispute shall be referred to the New Case Committee (unless by resolution of the Board other procedure appropriate to the particular circumstances is adopted). The New Case Committee may then, in its discretion, take any one of the following actions:

- (1) Retain the case for disposition by the Board.
- (2) Refer the case to the appropriate agent of the Board or to the appropriate industry panel.
- (3) Retain some of the issues in the case for disposition by the Board and refer the rest of the issues to the appropriate agent of the Board or industry panel.
- (4) Return the case to the U. S. Conciliation Service with an appropriate explanation, provided that such action by the New Case Committee in any case may be reviewed by the Board on its own motion.
- (5) Refer the case to an appropriate person or agent of the Board for preliminary investigation in accordance with the Committee's instructions.
- (6) Take such other action with respect to the assignment of the case as may be deemed appropriate by the committee.

If the Board takes jurisdiction of a case on its own motion under Section 7 of the War Labor Disputes Act the Board may assign the case, itself, or refer it to the New Case Committee for assignment.

(b) *Procedure. (Revision attached.)*

If the decision of the New Case Committee with respect to the acceptance or assignment of a particular case is unanimous, such decision shall be put into effect by the New Case Committee on behalf of the Board, subject to the right of the Board to review such action on its own motion. If in any case the decision of the Committee is not unanimous the case shall be referred to the Board for determination of the appropriate procedure to be followed. The presentation of the question to the Board shall be made by a public member of the Committee.

(c) *Assignment of Cases Retained in Washington, D. C.*

When all or part of the case is retained for disposition by the Board, the New Case Committee may determine that such case or part thereof shall be referred to one of the following:

- (1) a tri-partite panel;
- (2) a single hearing officer, if the parties consent thereto;
- (3) an arbitrator, if the parties agree or have agreed that the matter in dispute should be submitted to final and binding arbitration;
- (4) the Board in special cases; provided, however, that the Board may direct in any case, the particular method by which the case shall be heard.

§ 802.2 *Selection of Tri-Partite Panels.*

(a) A tri-partite panel shall consist of three members representative respectively of the public, industry, and labor. Each member shall be selected in the manner hereinafter described from a roster maintained by the Disputes Assignment Section. The roster shall be composed of the names of persons who have been approved by the Board. Names of individuals who are considered eligible to serve as public chairmen of tri-partite panels shall be proposed by the public members of the Board, and the other members of the Board shall be given opportunity to investigate and report to the public members on the qualifications of the nominee.

(b) Persons on the roster established in the foregoing manner shall be assigned to specific cases in accordance with the following procedure:

The Disputes Assignment Section shall propose a name for the roster on the basis of the special qualifications of the individual, the nature of the case and the location of the employer's establishment. The Labor representative shall be of the same affiliation (AFL or CIO) as the Union involved. If an independent union is involved, the name of an individual associated with another independent union shall be proposed. The proposed labor, industry or public members of a panel shall before assignment to a particular case, be approved by the Board. When a complete panel has been approved, inquiry shall be made whether the nominees are available to serve. If any nominee declines appointment, a replacement shall be selected in accordance with the procedure described above. Upon acceptance by the members of the panel of their appointment, appropriate notice shall be sent to the parties and to the panel members confirming the appointment of the panel and advising the panel and the parties of their respective rights and duties under the procedures of the Board.

§ 802.3 *Selection of Hearing Officers.*

The Disputes Assignment Section shall select from the roster referred to in Section 802.2 (a), above, the name of an individual who has been initially approved by the Board for service as a public representative on a tri-partite panel. The name so selected shall be submitted for approval to the public members of the Board. Upon such approval, inquiry shall be made as to the availability of the nominee, and if he declines appointment a replacement shall be named in accordance with the foregoing procedures. Upon acceptance of the designation, appropriate notice shall be sent to the Disputes Assignment Section to the parties and the hearing officer confirming his appointment and advising the hearing officer and the parties of their respective rights and duties under the procedures of the Board.

§ 802.4 *Hearings Before Panels or Hearing Officers.*

(a) If a case is assigned to a panel or hearing officer, the panel or hearing officer shall advise the parties that they may, if they so desire, submit their evidence and argument in writing. If the parties mutually agree in writing to such a presentation, the Director of the National Disputes Division shall transmit to them any requests for information needed by the panel or hearing officer and shall advise them of the procedure to be followed in submitting their case. If the parties do not agree to present their case in writing, a public hearing shall be held upon the merits of the dispute in accordance with the provisions of Sections 802.15 to 802.27, below.

(b) Any person who in a particular case serves as a hearing officer or as a member of a panel reporting to the Board shall be disqualified from participating in the case in any other capacity.

§ 802.5 *Hearing Before the Board.*

(a) If in any dispute case retained for original disposition by the Board, it is determined that the services of a panel or hearing officer are not appropriate, the Board will order a public hearing to be held before it on the merits of the dispute, unless the parties agree to waive such a hearing. The conduct of such a hearing shall be governed by the provisions of Sections 802.15 to 802.27, below.

(b) In any case, following a public hearing on the merits of the dispute, the Board may, in its discretion, prior to the decision of the case, afford the parties opportunity to present oral argument before it. In such cases each party shall be allowed forty-five minutes for oral argument, unless otherwise directed.

§ 802.6 Cases Involving Strikes or Lock-outs.

If there is a strike or lock-out in progress when a case is certified to the Board or when the Board takes jurisdiction of a case on its own motion under Section 7 of the War Labor Disputes Act, the Strikes Section of the Board, unless otherwise directed by the Board, shall notify the parties that the case is pending before the Board and that no action with respect to the merits of the dispute will be taken until the strike or lock-out is discontinued.

§ 802.7 Arbitration Proceedings.

See Sections 802.28 to 802.35, below.

§ 802.8 Functions of Appeals Committee.

See Section 802.41, below.

§ 802.9 Functions of Joint Committee. (See Section 801.10, above.)

It shall be the duty of this Committee to review, prior to any decision thereon, all questions before the Board or its agents involving the interpretation or application of Executive Order No. 9240, as amended by Executive Order 9248. Such questions, when involved in cases before the Board or its agents, shall, upon receipt by the Board or its agent of the panel or hearing officer's report, be referred to this Committee, together with copies of the report and the comments of the parties thereon, the written statements, briefs and exhibits of the parties and the stenographic record, if any has been made. When such questions are involved in a case before the Board, the Committee shall thereupon submit such questions to the Board for decision with appropriate recommendations. Where such questions are involved in cases pending before an agent of the Board, the Committee may take either of the following actions:

(1) Submit the question with its recommendations to the Board for appropriate disposition, if the Committee determines that the question raises an issue of national importance.

(2) Refer the question back for decision to the appropriate agent of the Board with suitable recommendations.

Action by the Board or its agent on all other issues in the case need not, in the discretion of the Board or its agent, be withheld pending action by the Joint Committee as above described.

§ 802.10 Functions of Review Committee.

Except as otherwise determined by the Board in particular cases, the Review Committee (see § 801.11, above) shall, prior to action by the Board, itself, review all cases retained in Washington, D. C. for original disposition by the Board and shall make appropriate recommendations in writing to the Board. These recommendations shall be presented to the Board by one of the Chairmen of the Review Committee.

§ 802.11 Decisions of the Board.

(a) Eligibility of Members of the Board to Participate in the Decision of Cases.

Any member of the Board who in a particular case serves as hearing officer, as member of a panel reporting to the Board, or as member of a review or appeals committee shall be disqualified from participating in any other capacity in any further proceedings in the case.

(b) Remand for Further Hearings.

At any time before its decision of a dispute case the Board may, upon the request of a party or upon its own motion, order a further hearing to be held before the Board, a tri-partite panel, or other representative of the Board or of an agent thereof for the purpose of receiving evidence not introduced at any prior hearing in the case. The conduct of such hearing shall be governed by the provisions of sections 802.15 to 802.27, below.

§ 802.12 Requests for Interpretation and Clarification of Board Directives in Dispute Cases (other than Board directives on appeals from directives of a Board agent).

If, after the issuance by the Board of a directive order in a dispute case, a disagreement arises concerning the interpretation of any provision of the directive order, any party to the case may file with the Board five copies of a request for clarification or interpretation of the directive order, provided that a copy of such request is at the same time transmitted by such party to all other parties to the case, and notice of the date of such transmittal is included in the request. Such other parties shall have ten days from the receipt of a copy of such request in which to mail comments thereon to the Board. The request and the comments

thereon shall be referred to the Post-Directive Committee (see § 801.12, above), which shall examine the same in the light of the record in the case. Where the ruling of the committee is unanimous, the Director of Disputes shall communicate the ruling to the parties. Where the ruling of the committee is not unanimous, or in any case where a member of the committee so requests, the question shall be presented by the Chairman of the Committee to the Board for its determination.

§ 802.13 Petitions for Reconsideration of Board Directives in Dispute Cases (other than Board directives on appeals from directives of a Board Agent).

A petition for reconsideration of a decision of the Board in a dispute case may be filed by a party thereto within fourteen days after the date of the issuance of such decision to the parties, provided that a copy of such petition is at the same time transmitted by such party to all other parties to the dispute, and notice of the date of such transmittal is included in the petition. Such petition, which shall be filed with five copies thereof, shall set forth fully the reasons for requesting reconsideration of the case. The other parties shall have ten days from the receipt of a copy of the petition in which to mail to the Board comments thereon. The petition and the comments thereon shall be referred to the Post-Directive Committee, which shall examine the petition in the light of the record in the case, and shall make a recommendation to the Board on the question involved. The Chairman of the Committee shall present the petition and comments of the parties to the Board, together with the recommendation of the Committee. The Board will either grant or deny the petition on the basis of the entire record in the case. If the petition is granted the case will be reconsidered and such disposition made or further procedure ordered therein as the Board may determine.

§ 802.14 Publication of Official Acts of the Board.

All appropriate regulations and all General Orders of the Board and amendments thereto shall be published in the Federal Register, and all decisions and opinions of the Board and its agents, including both majority and dissenting opinions, shall be released to the public and may be published in some appropriate publication to be designated by the Board.

II. Rules for the Conduct of Hearings under Section 7 of the War Labor Disputes Act. (Adopted November 26, 1943, by the National War Labor Board)

§ 802.15 Definition.

Panel. The term "panel" as used hereafter in this part, unless the context requires otherwise, includes any individual or body, including the Board or its agents, conducting a hearing under Section 7 of the War Labor Disputes Act.

§ 802.16 Pre-Hearing Procedure.

When the case has been set for hearing, the parties shall be notified at least ten days in advance of the date and place of the hearing and of the issues of which the Board or its agents have been apprised.¹ In an emergency the notice period may be reduced to the extent required by the exigencies of the situation. Such a notice shall not preclude the raising at the hearing of issues not specified therein, provided that for good cause shown a request for adjournment may be granted where necessary to permit a party to meet any issue raised of which he has not had adequate prior notice. The Board or its agent may in its discretion refer back to the parties for direct negotiation any issue which, in the opinion of the Board or agent, the parties have not made sufficient effort to settle through collective bargaining. The parties shall be requested to submit to the Board or its agent, as the case may be, not less than five days prior to the hearing, five copies of (a) a statement of any issues upon which they desire to be heard which are not included in the notice of hearing, (b) existing contracts, and (c) a statement of their position on each issue in dispute. If a union security issue is involved, the union shall be requested to furnish five copies of the union constitution and by-laws. A copy of each of these materials shall be served upon each opposing party at the same time that it is filed with the Board or its agent.

¹ Adequate notice of the issues in a dispute before the National Board or its agents will normally have been acquired by the parties in the course of collective bargaining negotiations, or the mediation or conciliation proceedings which have preceded the hearing, and as a result of such negotiations or proceedings the parties generally will have obtained, prior to the hearing, a better knowledge of the issues to be decided than the Board or its agents will then have.

§ 802.17 Public Character of Hearing.

A public hearing shall be conducted on the merits of each dispute which has been accepted by the Board, unless the parties have agreed to present their case in writing. The record made at such hearing shall include all documents, statements, exhibits, and briefs, which may be submitted, together with the stenographic record, if any. The parties shall have the right to attend the hearing with such persons as they desire, and the hearing shall be open to any other person who wishes to attend including representatives of the press and radio. The panel shall have the authority to make whatever reasonable regulations are necessary for the conduct of an orderly public hearing. The panel may, with the consent of the parties, exclude persons other than the parties at any time when the expeditious settlement of the dispute so requires.

§ 802.18 Participation by Panel in Panel Hearing.

(a) An attempt shall be made at the outset of the panel hearing to secure from the parties an agreed statement of any facts bearing on the issues and a definition of the issues still in dispute. The panel may, on its own initiative, at such hearing call witnesses and introduce documentary or other evidence, and may participate in the examination of witnesses for the purpose of expediting the hearing or eliciting material facts.

§ 802.19 Participation by Parties in Hearing.

(a) The interested parties or their representatives shall be given reasonable opportunity (1) to be present in person at every stage of the hearing; (2) to be represented adequately; (3) to present orally or otherwise any material evidence relevant to the issues; (4) to ask questions of the opposing party or a witness relating to evidence offered or statements made by the party or witness at the hearing, unless it is clear that such questions have no material bearing on the credibility of that party or witness or on the issues in the case; (5) to know and rebut any evidence, oral, documentary or otherwise; (6) to present to the panel oral or written argument on the issues.

(b) The witnesses at a hearing need not be sworn, but any person who at such hearing knowingly and wilfully makes any false statements, sworn to unsworn, is subject to the penalties provided by law (18 USCA Section 80).

§ 802.20 Stenographic Records.

In all cases heard by the Board, itself, or by a Division thereof, an official stenographic record shall be made. In cases heard by, or under the authority of, any agent of the Board, no official stenographic record of the case shall be made save in exceptional circumstances and on instructions of such agent. In cases heard by a panel appointed by the Board, itself, the panel may in its discretion, subject to the approval of the National Disputes Division, order an official stenographic record of the hearing to be made. In all cases where an official stenographic record of a hearing is made, a copy of such record shall be available for inspection by the parties. Whether or not an official stenographic record of a hearing is made, any party may, at his own expense, provide for the making of a stenographic record of the hearing but shall in such case, make a copy available to the panel without cost, and to each of the other parties to the proceeding at the regular rate for copies.

§ 802.21 Rules of Evidence.

The hearing may be conducted informally. The receipt of evidence at the hearing need not be governed by the common law rules of evidence.

§ 802.22 Facilities Available to Panel and Parties.**(a) Wage Data.**

The panel or the parties may, during the proceedings in a case, consult with the appropriate Wage Stabilization Division for the purpose of obtaining information pertaining to any wage or salary issue in the case. A member of such Division may be assigned by the Wage Stabilization Director, after consultation with the Disputes Director, to attend the proceedings before the panel and to furnish any wage data that may be required. Information so obtained by a panel and used as a basis for its report or recommendations shall, prior to the submission of the report and recommendations of the panel, be made available to all the parties for their inspection and comment.

(b) Disputes Division.

The services and advice of the appropriate Disputes Division shall be available to the panel and parties upon a proper request. Information of a factual nature

furnished by that Division to a panel and used as a basis for its report or recommendations shall be made available to the parties, for inspection and comment prior to the submission of the report and recommendations of the panel.

§ 802.23 Adjournment of Hearing to Permit Direct Negotiations.

Where, in the opinion of the panel, the parties should make further efforts to settle an issue by collective bargaining or where the parties agree to do so, the panel may recess a hearing to allow the parties to resume direct negotiations for as long a period as they may mutually agree upon or until a date specified by the panel for reconvening the hearing. Whenever possible, the panel shall, at the time of the recess, notify the parties of the date when the panel will reconvene with the parties. If it is not possible to give such notice at the time of recess, the parties shall be given at least five days advance notice of the date of reconvening, unless the exigencies of the situation require shorter notice.

§ 802.24 Settlement of Issue by Agreement between Parties.

If, during the proceedings in a case, an agreement is reached between the parties with respect to any issue in dispute, they shall be requested to execute in triplicate a statement in writing to that effect, which shall be included in the file of the case, or, if that is not deemed feasible, the panel may, itself, make an appropriate memorandum of the parties, agreement, which shall be included in the record.

§ 802.25 Panel Report and Comments.**(a) General.**

(1) After the conclusion of the hearing the panel shall submit to the Board or its agent, as the case may be, an original and six copies of its report and recommendations on any issues which the parties have not in the meantime settled or agreed to submit to arbitration.

(2) Unless otherwise instructed in the order of reference, or by subsequent order of the Board or its agent, panels appointed by the Board or its agents shall make recommendations as well as findings of fact. Where a novel and important question of policy is presented, however, the panel may present the question to the Board or its agents, as the case may be, together with the contentions of the parties and all pertinent information, without recommendation. When in doubt as to whether or not a given question is of such novelty and importance as to warrant presenting it to the Board or agent in this fashion, the panel shall consult the Director of the appropriate Disputes Division.

(3) The appropriate Director of disputes shall examine all reports by panels and hearings officers before their issuance to the parties for the purpose of advising the Board or agent, as the case may be, of any special problems or serious departures from established Board policy, and he shall then communicate to each member of the panel any special instructions of the Board or its agent, as the case may be.

(4) Panels shall make no recommendation or ruling on objections raised to the jurisdiction of the Board or agent but shall only hear the evidence and arguments of the parties with respect thereto and shall transmit the objection without recommendation or ruling thereon to the Board or its agent, as the case may be, together with the entire record of the case including the panel's report and recommendations on the merits of the dispute. In exceptional cases and within its discretion the panel may, prior to hearing the merits of the dispute, transmit for a ruling to the Board or its agent, as the case may be, the objections of the parties to the Board's jurisdiction together with the entire record of the case but without any ruling or recommendation by the panel.

(5) Copies of each panel report, after review by the appropriate Disputes Division, shall be sent to the parties. The parties shall have the right to submit comments upon the report and recommendations within ten days after they are mailed to them, or within such other time as may be agreed upon by the parties, allowed by the panel or by the appropriate Disputes Division. If such comments are furnished by the parties they shall be accompanied by fifteen copies, which shall be distributed together with copies of the panel report to the members of the Board or its agent, as the case may be.

(b) Procedure in Cases Involving Price Relief or Increase in Production Cost.

If the panel report recommends a wage or salary adjustment, there shall be transmitted to the employer, together with a copy of the panel's report, a request that he transmit, within the period allowed him for filing comments upon such report, information on the following points:

(1) Whether he has a contract with any procurement agency of the United States government for furnishing any product or service, and if so, (a) the name

of such agency and the contract number (b) whether the granting of the wage or salary adjustment recommended by the panel may result in an increase in the cost of the product or service to the United States under such contract and (c) what part, if any, of such adjustment may be granted without resulting in an increase in such cost.

(2) Whether the granting of the wage or salary adjustment recommended by the panel will be made the basis for an application by the employer to the Office of Price Administration for an adjustment of his individual maximum prices or for a petition for an amendment of a regulation which establishes maximum prices for his product or service, and, if so, what part, if any, of such adjustment may be granted without requiring such price relief.

(3) The employer shall be advised at the same time that if he intends to seek price relief from the Office of Price Administration in the event a wage or salary increase is directed, he must within fifteen days after the receipt of the panel's report file with the nearest office thereof an appropriate application for such relief, and notify the Board or its agent, as the case may be, of such filing within the time allowed him for transmitting comments on the panel's report. If the employer advises the Board or its agent that the granting of a wage or salary increase will be made the basis of an application for price relief or may result in an increase in the cost to the United States Government of his product or service, he shall at the same time (a) transmit to the union a copy of his statement to that effect and (b) notify the Board or its agent of the date of such transmittal. The union may, within ten days after receiving a copy of such statement from the employer, file with the Board or its agent its comments thereon. Fifteen copies of such comments shall be furnished.

§ 802.26 Request for Wage Data by Wage Stabilization Division.

If the case involves a wage or salary issue, the appropriate Wage Stabilization Division may request the parties, prior to, during, or after, the hearing to submit specified information relating to such issue and appropriate notice of such request shall be given to the other party together with a reasonable opportunity to inspect and comment upon such data prior to the decision of the case.

§ 802.27 Subpoenas.

The Board may, by its Chairman, issue subpoenas requiring "the attendance and testimony of witnesses, and the production of any books, papers, records, or other documents, material to any inquiry or hearing before the Board or any designated member or agent thereof." Such subpoenas may be issued on behalf of the Board or any of its agents, or on behalf of a party to a dispute before the Board or any of its agents.

(a) Procedure for Issuance of Subpoenas on Behalf of Agents of the Board.

A request for a subpoena originating with a Regional Board or panel or hearing officer thereof shall be transmitted by the Chairman of such panel or by such hearing officer or Board to the Regional Attorney for transmission to the General Counsel of the National Board, who will present such request to the Chairman thereof. Requests for subpoenas by panels or hearing officers appointed by and reporting directly to the Board or by industry commissions or boards shall be transmitted by the Chairman of the panel or by the hearing officer, or by the Chairman of the commission or board, as the case may be, to the General Counsel of the Board for submission to the Chairman thereof. Such requests shall in all cases be accompanied by a written statement specifying (1) the name and nature of the proceeding in which the subpoena is required; (2) the name of the person whose attendance is required; (3) the body, and names of the persons, before whom such attendance is required; (4) the nature and materiality of the testimony or documentary evidence to be supplied by the witness; (5) a description of the efforts which have been made to obtain voluntary attendance of the witness or voluntary production of the required documentary evidence. The statement shall also contain the information to be inserted in the subpoena, such as the time and place of attendance, and a list of the records and documents whose production is required.

(b) Procedure for Issuance of Subpoenas on Behalf of Parties.

The procedure shall be the same as indicated in paragraph (a) above, except that the body or person before whom attendance is required shall transmit with the request for a subpoena, in addition to the information required in paragraph (a) above, a statement as to the identity of the person or persons on whose behalf the subpoena is to be issued and a recommendation as to its issuance.

(c) Service of Subpoenas.

If a request for the issuance of a subpoena is granted the subpoena will ordinarily be forwarded to the Regional Attorney or other individual who transmitted the request, who will then transmit the subpoena to the proper authority for service. Save in exceptional cases, service of subpoenas shall be effected through United States Marshals within their respective territorial jurisdiction. In exceptional circumstances, service may be made by any other person who is not a party to the proceeding, and who is not less than 18 years of age. Service of the subpoena shall be made by delivering a copy to the witness personally. An affidavit of service shall be executed by the person or officer making the service. If the witness does not appear at the hearing, the original subpoena with the executed affidavit of service shall be introduced in evidence. Cases of non-compliance with a subpoena shall be reported to the General Counsel of the Board, together with a recommendation with respect to the further action to be taken by the Board under Section 7 (a) (4) ¹ of the War Labor Disputes Act.

(d) Witness Fees.

When the subpoena is issued at the request of or on behalf of, a party, the person whose attendance is required shall, at the time of service, be tendered the fees for one day's attendance and the mileage allowed by law. Witness fees and mileage in the same amounts as are paid witnesses in Federal Courts shall be paid by the party at whose instance the witness appears. Where the subpoena is issued on behalf of the Board, witness fees and mileage need not be tendered at the time of service.

III. Arbitration Policy (Adopted November 26, 1943, by the National War Labor Board)

§ 802.28 Definitions.

(a) Dispute Case.

The term "dispute case" as used herein means a labor dispute which has been certified to the National War Labor Board by the U. S. Conciliation Service or over which the Board has taken jurisdiction on its own motion, under Section 7 of the War Labor Disputes Act or under relevant Executive Orders.

(b) Arbitrator.

As used herein, the term "arbitrator" refers to an individual or body which has been authorized by written agreement of the parties or by order of the Board or its agent to render a decision in a labor dispute which shall be final and binding upon the parties (subject only to Board review with respect to wage or salary issues).

§ 802.29 Appointment of Arbitrator.

(a) When Appointed by Board or Agent.

The Board or agent will appoint an arbitrator, as defined above, in the following cases:

- (1) Upon the joint request of the parties;
- (2) When the parties, having agreed to arbitrate, are unable to agree on an arbitrator, and such disagreement develops into a labor dispute, which comes before the Board as a dispute case; or
- (3) Whenever it is deemed appropriate by the Board or its agent to do so.

(b) Selection of Arbitrator.

The appropriate Disputes Division shall propose a name from a list of persons who have been approved by the Board or agent for service as arbitrators. The name so proposed shall be submitted for approval to the Board or its agent, as the case may be. Unless the parties otherwise agree, the appointment of an arbitrator shall not be delegated by the Board or its agent to an association, agency, or individual.

§ 802.30 Jurisdiction of Board Over Disputes Involving Arbitration.

The Board or its agent will not issue a directive order in any dispute relating to arbitration unless the dispute has come before the Board as a "dispute case," as defined above.

¹ Section 7 (a) (4) of the War Labor Disputes Act empowers the National War Labor Board: "To apply to any Federal District court for an order requiring any person within its jurisdiction to obey a subpoena issued by the Board; and jurisdiction is hereby conferred on any such court to issue such an order."

§ 802.31 *Review of Arbitrator's Award on Wage or Salary Issues.*

(a) If an award is rendered by an arbitrator on a wage or salary issue in any case, a copy of the award, together with all the information submitted to the arbitrator relating to the wage or salary issue, shall be filed by the arbitrator directly with the Board or its appropriate agent at the same time that it is issued to the parties. The Board or its agent shall immediately notify the parties that the award has been filed with it for approval, and the employer shall be requested to indicate, in accordance with the procedures set forth in Section 802.25 (b), above, a statement whether price relief or an increase in production cost is involved. The award shall then be approved, modified, or disapproved in accordance with the Board's wage stabilization policy. In so acting the Board or its agent will seek to determine whether the arbitrator has correctly applied all the criteria of the Board's wage stabilization policy to the facts of the case. If it appears to the Board or its agent that the arbitrator has manifestly erred in applying or failing to apply any material aspect of the Board's wage stabilization policy, the Board or its agent may refer the case back to the arbitrator (for reconsideration and for resubmission to the Board or its agent) with appropriate advice in regard to the policies of the Board which are involved. Referral to the arbitrator of specific issues for reconsideration shall not preclude him from reconsidering other inter-related issues within the scope of the arbitration submission.

(b) When an arbitrator re-submits his award to the Board or its agent, it shall be processed in accordance with the procedure set forth in paragraph (a) above.

§ 802.32 *Enforcement of Arbitration Awards.*

In any dispute case (as above defined) involving the refusal of a party to carry out the provisions of a wage or salary award by an arbitrator as finally ruled on by the Board or its agent, pursuant to Section 802.31, above, or of an arbitrator's award on a non-wage issue, the merits of the award will not be reviewed. In acting upon such a dispute case the Board or its agent will direct that the terms and conditions of employment set forth in the arbitrator's award, or, in the case of a wage or salary adjustment, in the award as ruled on by the Board or agent, shall govern the relations between the parties unless the Board or its agent finds that the award is outside the scope of the reference or submission to arbitration. Any such directive order of the Board or its agent shall be without prejudice to the right of any party to the case to appeal to a court of competent jurisdiction for a judicial determination of the rights and obligations arising out of the award and, if such a court renders a decision contrary to the conclusions of the Board or its agent, the order, or such part thereof as may be contrary to the determination of the court, shall be considered of no force or effect.

§ 802.33 *The Board's Ultimate Right to Review.*

In any appropriate case within its jurisdiction, the Board reserves the right on its own initiative to review any arbitration award.

§ 802.34 *Cases Involving Executive Order 9240.*

If the dispute submitted to an arbitrator by the parties or referred to him by the Board or agent involves the interpretation or application of the provisions of Executive Order 9240, as amended, the arbitrator's award, before it is acted on by the Board or its agents, shall be submitted, for comment, by the Board or its agent to the Joint Committee established to review all cases involving Executive Order 9240, as amended (see Section 801.10, above).

§ 802.35 *Effective Date.*

The provisions of §§ 802.28 to 802.34, above, shall take effect on December 6, 1943, and shall apply to all cases arising thereafter and to all cases arising prior to that date in which no final action has as of that date been taken by the Board or any of its agents. The Board's statement on Arbitration Policy adopted by it on September 1, 1943, is hereby rescinded.

IV. *Appeals Procedure (Adopted by the National War Labor Board November 10, 1943)*§ 802.36 *Definitions.*

The term "Board" refers to the National War Labor Board. The term "agent of the Board," unless the context clearly requires otherwise, includes Regional War Labor Boards, Industry Commissions of the National War Labor Board, the Wage Adjustment Board for the Building Construction Industry, or any other agency to which the National War Labor Board has delegated, or may hereafter delegate, authority to issue, subject to review by the National War

Labor Board, (1) final rulings on voluntary applications for approval of wage or salary adjustments or (2) final directive orders in dispute cases.

§ 802.37 *Stay of Order or Ruling of an Agent of the Board.* (Revision attached.)(a) *Rulings in Voluntary Wage or Salary Cases.*

(1) *Effective Date.* Rulings of an agent of the Board on a voluntary application for a wage or salary adjustment shall take effect when issued to the parties.

(Revision attached.) (2) *Stay of Issuance to Parties.* Rulings of an agent of the Board on a voluntary application for approval of a wage or salary adjustment may be issued to the parties when made, except that if any member of such agent who votes upon a ruling which is not unanimous requests that it be stayed, such ruling shall forthwith be transmitted by such agent to the Board and may be issued to the parties only upon expiration of ten days after its receipt in Washington, unless (i) the ruling is earlier approved by the Board or (ii) within such ten-day period the Board sets the case down for review. In the latter event the Executive Assistant to the Board shall notify the agent of the Board, and the issuance of the ruling to the parties shall be stayed until the case is finally disposed of.

(b) *Directive Orders in Dispute Cases.* (Revision attached.)

Agents of the Board shall issue their directive orders to the parties when made. If after the issuance of such an order no timely petition for review is filed (as provided in Section 802.38, below) and if the Board within such a period does not review the agent's order on its own motion, the order shall on the day following the last day for filing such a petition stand confirmed as the order of the Board and shall immediately be effective according to its terms; provided that the Board may at any time prior to the expiration of the time for the filing of a petition for review make such an order, or any part thereof, immediately effective pending any further proceedings. If a timely petition for review of a directive order of an agent of the Board is filed by a party, or if the Board reviews such an order on its own motion, the entire order shall be suspended, unless the Board directs, or has directed, otherwise, or unless the parties otherwise agree. However, the date of expiration of the escape period fixed in a directive order of an agent of the Board granting a maintenance of membership provision shall not be affected by the filing of a petition for review of this or any other provision of the order.

§ 802.38 *Petitions for Review.* (Revision attached.)

Within fourteen days after an agent of the Board mails to a party a ruling denying or modifying a voluntary application for approval of a wage or salary adjustment, or remits to him a directive order in a dispute case, such party may mail to the Board at Washington, D. C., an original and four copies of a petition, including supporting documents, seeking review by the Board of such ruling or directive order. The petition shall (1) state the petitioner's reasons for believing that one or more of the criteria set forth below is satisfied, (2) set forth fully and in detail the contentions of the petitioner with respect to the merits of each issue raised by the petition, with specific references to any pertinent portions of the record in the case, and (3) state that a copy of the petition has been served upon the other parties to the case and upon the agent of the Board whose ruling or order is sought to be reviewed and the dates of each such service. No such petition shall be granted unless the petitioner has demonstrated by substantial proof that (1) the order exceeds the Board's jurisdiction, or (2) the order contravenes the established policies of the Board, or (3) a novel question is involved of such importance as to warrant national action, or (4) the procedure resulting in the order was unfair to the petitioner, and has caused substantial hardship. The party filing a petition shall at the same time serve a copy thereof, together with any supporting documents, upon each of the other parties to the proceeding and upon the appropriate agent of the Board.

§ 802.39 *The Answer.* (Revision attached.)

Within fourteen days after a copy of a petition for review is mailed by the petitioning party to any other party to the case, such other party may mail to the Board an answer to the petition. An original and four copies of the answer shall be transmitted to the Board in Washington, D. C., and a copy shall at the same time be served upon the appropriate agent thereof and upon each of the other parties to the case. Such an answer shall include a statement that a copy thereof has been served as required above, and shall show the date of such service. An answer may not contain a request for review of an order or any part thereof; such a request must be filed, if at all, in the form of a petition for review in the manner and within the time limit provided in Section 802.38, above. Each answer should

state fully but concisely the respondent's reasons for believing (1) that the petition ought not to be entertained, and (2) that, if the Board decides to entertain the petition, the petition should be denied on the merits.

§ 802.40 *Review by the Board on Its own Motion.*

The Board may, on its own motion, assume jurisdiction over any case at any stage of the proceedings either before or after the issuance of the final order or ruling of an agent of the Board.

§ 802.41 *Processing by Appeals Committee of Petitions for Review.*

(a) All petitions for review of a ruling or directive order of an agent of the Board shall, when filed with the Board, be referred to the Appeals Committee. If the Appeals Committee determines from a review of the petition and the answer, if any, (1) that it has not been demonstrated that any of the criteria enumerated in section 802.38, above, has been met, and that the petition should therefore be denied, or (2) that the petition has met one of these criteria and should therefore be entertained, or (3) that as to some issues the petition should be denied and as to others it should be entertained, the Committee shall make an appropriate recommendation to the Board. If the petition is denied, in whole or in part, the Board shall issue an appropriate directive order or ruling as provided in section 802.42, below. If the Board decides that the petition should be entertained in whole or in part, the Committee shall report to the Board, as soon as may be, its recommendations as to the merits. When the Committee considers the merits of any issue, it shall consider the petition, the answer, if any, the record made in the case before the agent of the Board, and the comments, if any, submitted by the Board's agent, together with any further information obtained by such investigation as the Committee may, on its own motion, deem necessary, provided that information obtained as a result of such investigation shall not be used as the basis for its recommendations unless and until such information has been made available to the parties and they have had an adequate opportunity for rebuttal orally or in writing, as they may elect.

(b) If any members dissent from any recommendation by the majority of the Committee, they may indicate to the Board the grounds of their dissent.

§ 802.42 *Decisions of the Board.*

Form of Decision. The Board will make its decision on a petition for review upon the basis of the record before the agent of the Board and on the basis of the petition, the answer, if any, the recommendations of the Appeals Committee and such further argument and proof as the Board may require. If the petition for review is denied because the grounds for review set forth therein are deemed to be insufficient, the Board shall issue an appropriate directive order or ruling adopting as its own the ruling or order to which the petition relates. If the petition for review is granted, the Board will issue an appropriate directive order or ruling adopting, reversing or modifying the order or ruling to which the petition relates or remanding the case to the appropriate agent of the Board for such further action as is specified in the order of ruling of the Board.

§ 802.43 *Reconsideration of Board Orders in Appeals Cases.*

(a) When, pursuant to Section 802.42, above, the Board has issued a directive order adopting as its own the order of its agent, the directive order shall be placed into effect immediately upon its issuance in accordance with its terms. In such cases, a petition for reconsideration of the Board's action will not be entertained.

(Revision attached.) (b) (1) When, pursuant to Section 802.42, above, the Board has issued a directive order reversing or modifying the order of its agent, the order shall be placed into effect in accordance with its terms. A petition for reconsideration of any provision of the Board's order which effects a change in the order of the agent may be mailed to the Board by any party within fourteen days from the date that the order was mailed to such party. Such petition, if filed, shall be in writing and shall be accompanied by four copies and additional copies thereof shall be served on the other parties to the case and upon the appropriate agent of the Board. The filing of such a petition shall not stay any provision of the Board's orders, unless the Board so directs.

(2) Such a petition for reconsideration shall—

(i) State reasons for believing that one or more of the criteria set forth in paragraph (b) (3), below, is satisfied;

(ii) Set forth fully and in detail the contentions of the petitioner with respect to the merits of each issue raised by the petition, with specific references to any pertinent portions of the record in the case; and

(iii) State the dates when copies of the petition were served upon the other parties to the case.

(3) No such petition shall be granted unless the petitioner has demonstrated by substantial proof that:

(i) The provision challenged by the petition contravenes the established policies, or exceeds the jurisdiction, of the Board; or,

(ii) The procedure resulting in the order was unfair to the petitioner and has caused substantial hardship.

(c) The petition shall be referred to the Appeals Committee, which shall examine the petition in the light of the entire record of the case and recommend to the Board whether the petition should be entertained. If the Board determines to entertain the petition, the case will be reconsidered in accordance with such procedure as the Board may direct.

(d) The Board's decision on the merits of a petition for reconsideration shall be made on the basis of the entire record in the case. Any directive order issued by the Board disposing of a petition for reconsideration shall be placed into effect immediately upon its issuance in accordance with its terms.

§ 802.44 *Effective Date.*

The foregoing provisions of sections 802.36 to 802.43 shall apply to all directive orders and rulings which have been issued on and after December 1, 1943.

(Sections 802.45, 802.46, 802.47, 802.48, 802.49, attached.)

§ 802.38 *Petitions for Review.* (The first sentence is changed to read:) Within fourteen days after an agent of the Board mails to a party a ruling denying or modifying a voluntary application for approval of wage or salary adjustment, or remits to him a directive order in a dispute case, such party may mail to the Board at Washington, D. C., an original and four copies of a petition, including supporting documents, seeking review by the Board of such ruling or directive order.

§ 802.39 *The Answer.* (The first sentence is changed to read:) Within fourteen days after a copy of a petition for review is mailed by the petitioning party to any other party to the case, such other party may mail to the Board an answer to the petition.

§ 802.43 (b) (1). (The second sentence is changed to read:) A petition for reconsideration of any provision of the Board's order which effects a change in the order of the agent may be mailed to the Board by any party within fourteen days from the date that the order was mailed to such party.

TITLE 29—LABOR

CHAPTER VI—NATIONAL WAR LABOR BOARD

Part 802—Rules of Procedure

The National War Labor Board has adopted the following amendments:

§ 802.38. *Petitions for Review.* (The first sentence is changed to read:) Within fourteen days after an agent of the Board mails to a party a ruling denying or modifying a voluntary application for approval of a wage or salary adjustment, or remits to him a directive order in a dispute case, such party may mail to the Board at Washington, D. C., an original and four copies of a petition, including supporting documents, seeking review by the Board of such ruling or directive order.

§ 802.39 *The Answer.* (The first sentence is changed to read:) Within fourteen days after a copy of a petition for review is mailed by the petitioning party to any other party to the case, such other party may mail to the Board an answer to the petition.

§ 802.43 (b) (1). (The second sentence is changed to read:) A petition for reconsideration of any provision of the Board's order which effects a change in the order of the agent may be mailed to the Board by any party within fourteen days from the date that the order was mailed to such party.

(E. O. 9017; 9250; 7 F.R. 237, 7871). (Adopted January 10, 1944).

§ 802.37 *Stay of Order or Ruling of an Agent of the Board.*

(a) *Rulings in Voluntary Wage or Salary Cases.*

(1) *Effective Date.*—Rulings of an agent of the Board on a voluntary application for a wage or salary adjustment shall take effect when issued to the parties.

(2) *Stay of Issuance to Parties.*—Rulings of an agent on a voluntary application for approval of a wage or salary adjustment may be issued to the parties when made, unless two or more public members of such an agent who dissent from a ruling request that the issuance of the ruling or any specified portion thereof be stayed and at the same time state the reasons for their request. In such event, the ruling or the specified portion thereof and the accompanying request shall immediately be transmitted to the Board and, except as provided in paragraph (3) below shall not be issued to the parties until the expiration of 10 days after receipt in Washington of the request for stay, unless (i) the ruling is earlier approved by the Board, or (ii) within such ten-day period, the Board sets the case down for review. In the latter event, the Executive Assistant to the Board shall communicate the Board's action to the agent of the Board, and the requested stay shall continue in effect until the case is finally disposed of.

(3) *If only a specified portion of a ruling is asked to be stayed, as above provided, the agent of the Board may, in its discretion, issue to the parties any other unrelated provisions of the ruling at any time after the ruling is made.*

(b) *Directive Orders in Dispute Cases.*

(1) Agents of the Board shall issue their directive orders to the parties when made. If after the issuance of such an order, no timely petition for review is filed within the period prescribed in Section 802.38, below, and if the Board within such a period does not review the agent's order on its own motion, the order shall on the day following the last day for filing such a petition, stand confirmed as the order of the Board and shall immediately be effective according to its terms; provided that the Board may at any time prior to the expiration of the time for the filing of a petition for review make such an order, or any part thereof, immediately effective pending any further proceedings.

(2) If a timely petition for review of a Directive Order of an agent of the Board is filed by a party in accordance with the provisions of Section 802.33 below, or if the Board reviews such an order on its own motion, the entire order shall be suspended unless and until, the Board directs, or has directed, otherwise, or the parties otherwise agree. However, the date of expiration of the escape period fixed in a directive order of an agent of the Board granting a maintenance of membership provision shall not be affected by the filing of a petition for review of this or any other provision of the order.

The following paragraph, (b) (3), should be added to Section 802.37—*Stay of Order or Ruling of an Agent of the Board*—of "Rules of Organization and Procedure of the National War Labor Board."

(b) (3) *If only a part of the order is sought to be reviewed, any party may petition the Board to make the rest of the order immediately effective according to its terms. The parties may in any case mutually agree upon the date when the order, or any part thereof, shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Economic Stabilization Director, the parties may not by their agreement make such adjustment effective prior to the date of such approval.*

Other technical revisions to Section 802.37, (a) (1), (a) (2) and (a) (3), and (b) (1) and (b) (2) were issued February 14, 1944, under Press Release B-1303.

APPROVED REVISION OF RULES OF ORGANIZATION AND PROCEDURE, NATIONAL WAR LABOR BOARD, EFFECTIVE MAY 1, 1944

§ 802.38 *Petitions for Review.*

Within fourteen days after an agent of the Board mails to a party a directive order in a dispute case or a ruling denying or modifying an application for approval of voluntary wage or salary adjustment, such party may mail to the agent of the Board which issued the directive order or ruling an original and four copies of a petition, including supporting document, seeking review by the National War Labor Board of such ruling or directive order. The petition shall (1) state the petitioner's reasons for believing that one or more of the criteria set forth below is satisfied, (2) set forth fully and in detail the contentions of the petitioner with respect to the merits of each issue raised by the petition, with specific references to any pertinent portions of the record in the case, and (3) state that a copy of the petition has been served upon the other parties to the case, and the date of such service.

No such petition seeking review by the Board of a ruling or directive order of an agent of the Board shall be granted unless the petitioner has demonstrated by substantial proof that (1) the ruling or order exceeds the Board's jurisdiction, or (2) the ruling or order contravenes the established policies of the Board, or (3) a novel question is involved of such importance as to warrant national action, or (4) the procedure resulting in the ruling or order was unfair to the petitioner, and has caused substantial hardship. The party filing a petition shall at the same time serve a copy thereof, together with any supporting documents, upon each of the other parties to the proceeding.

§ 802.39 *The Answer.*

Within fourteen days after a copy of such a petition for review is mailed by the petitioning party to any other party to the case, such other party may mail an answer to the petition to the agent of the Board which issued the directive order or ruling. An original and five copies of the answer shall be transmitted to such agent of the Board and a copy shall at the same time be served upon each of the other parties to the case. Such an answer shall include a statement that a copy thereof has been served as required above, and shall show the date of such service. An answer may not contain a request for review of an order or any part thereof; such a request must be filed, if at all, in the form of a petition for review in the manner and within the time limit provided in Section 802.38 above. Each answer should state fully but concisely the respondent's reasons for believing (1) that the petition ought not to be entertained, and (2) that, if the Board decides to entertain the petition, the petition should be denied on the merits.

§ 802.39a *Petitions for Review of Rulings or Directive Orders Modified Upon Reconsideration.*

If the ruling or directive order issued by an agent of the Board is modified by such agent in response to a petition for reconsideration or upon its own motion, the agent shall issue to the parties such ruling or order, as modified, in the same manner and with the same effect as is provided in Section 802.37 above. The order or ruling as modified shall be subject to review in accordance with the provisions of Section 802.38 and 802.39 above, except that the period prescribed therein for filing a petition for review or answer thereto shall be seven instead of fourteen days.

Effective date of Amendments. The foregoing amendments shall apply to all rulings and directive orders issued on or after May 1, 1944.

Pre-review of wage issues in dispute cases

The Rules of Procedure of the National War Labor Board (Section 802.37 (a) (2)) provide for a dissent pre-review of wage issues only in applications for voluntary wage or salary adjustments. No provision is contained in the Rules of Procedure for a pre-review, or for a stay of the issuance of any provisions of

a directive order in dispute cases. The provisions of a directive order in a dispute case, are, however, automatically stayed until the expiration of the period for the filing of a petition for review, or, if a petition for review is filed, until the National Board acts thereon. (Section 802.37 (b).)

Section 802.37 (a) (2) of the Rules of Procedure of the National War Labor Board, and Section VII-A-4 of the Jurisdiction and Procedure of Regional War Labor Boards, which provide for the pre-view of rulings in voluntary wage or salary cases, have recently been amended to provide that the issuance of a ruling in such a case may be stayed only upon the request of two or more dissenting public members of the Regional Board or Commission. It has been decided that this provision shall also be applicable to wage issues in dispute cases. The issuance of the provisions of a directive order dealing with wage issues in a dispute case may, therefore, now be stayed upon the request of two or more dissenting public members of the Regional Board or Commission, in accordance with the procedure now applicable to voluntary cases. The Rules of Procedure of the National War Labor Board and of the Regional Boards will shortly be amended to include this provision.

Except as specified herein, no right exists for a pre-review of any issue in a dispute case, and directive orders in dispute cases shall be issued to the parties when made in accordance with Section 802.37 (b) of the Rules of Procedure of the National War Labor Board, and Section VII-B-1 of the Jurisdiction and Procedure of Regional War Labor Boards.

The following sections or portions thereof of the "Rules of Organization and Procedure" of the National War Labor Board have been amended as indicated below:

§ 802.1 * * *

(b) *Procedure.* The decision of the majority of the members of the New Case Committee with respect to the acceptance or assignment of a particular case shall be put into effect by the Committee on behalf of the Board, subject to the right of any member of the Committee to refer the matter to the Board, and the right of the Board to review the action of the Committee on its own motion.

§ 802.37 * * *

(b) *Directive Orders in Dispute Cases.* (1) Agents of the Board shall issue their directive orders to the parties when made. The issuance of any provision of a directive order, however, which relates to a wage or salary adjustment, may be stayed if two or more public members of the agent dissent from the provision and request that its issuance be stayed. In such event a copy of the directive order and the request, for the stay, together with a statement of the reasons for such request, shall be immediately transmitted to the Board. The provision so sought to be stayed shall not be issued to the parties until the expiration of ten days after receipt in Washington of the request for the stay, unless (i) the issuance of such provision is earlier approved by the Board or (ii) within such ten-day period the Board sets the case down for review. In the latter event, the Executive Assistant to the Board shall communicate the Board's action to the agent of the Board, and the stay shall continue in effect until the case is finally disposed of.

(2) If after the issuance of a directive order by an agent of the Board, no timely petition for review is filed within the period prescribed in Section 802.38, below, and if the Board within such a period does not review the agent's order on its own motion, the order shall on the day following the last day for filing such a petition, stand confirmed as the order of the Board and shall immediately be effective according to its terms; provided that the Board may at any time prior to the expiration of the time for the filing of a petition for review make such an order, or any part thereof, immediately effective pending any further proceedings.

(3) If a timely petition for review of a Directive Order of an agent of the Board is filed by a party in accordance with the provisions of Section 802.38, below, or if the Board reviews such an order on its own motion, the entire order shall be suspended, unless and until, the Board directs, or has directed, otherwise, or the parties otherwise agree. However, the date of expiration of the escape period fixed in a directive order of an agent of the Board granting a maintenance of membership provision shall not be affected by the filing of a petition for review of this or any other provision of the order.

(4) If only a part of the order is sought to be reviewed, any party may petition the Board to make the rest of the order immediately effective according to its

terms. The parties may in any case mutually agree upon the date when the order, or any part thereof, shall take effect, except that where a wage or salary adjustment is made subject to the approval of the Economic Stabilization Director, the parties may not by their agreement make such adjustment effective prior to the date of such approval.

§ 802.43 *Reconsideration of Board Orders or Rulings in Appeals Cases.*

(a) When, pursuant to Section 802.42, above, the Board has issued a directive order or ruling adopting as its own the order or ruling of its agent, the directive order shall, and the ruling may, immediately upon its issuance, be placed into effect in accordance with its terms. In such cases, a petition for reconsideration of the Board's action will not be entertained.

(b) (1) When, pursuant to Section 802.42, above, the Board has issued a directive order or ruling reversing or modifying the order or ruling of its agent, the order or ruling of the Board shall be effective in accordance with its terms. A petition for reconsideration of any provision of the Board's order or ruling which effects a change in the order or ruling of the agent may be mailed to the Board by any party within fourteen days from the date that the order or ruling was mailed to such party. Such petition, if filed, shall be in writing and shall be accompanied by four copies, and additional copies thereof shall be served on the other parties to the case and upon the appropriate agent of the Board. The filing of such a petition shall not stay any provision of the Board's orders or rulings, unless the Board so directs.

V. *Reconsideration and Clarification of Orders and Rulings of the Board*

§ 802.45 *Interpretation and Clarification of Board Directives in Disputes Cases (Other than Directives on Appeals from Directives of a Board Agent).* (See Section 802.12.)

§ 802.46 *Reconsideration of Board Directives in Disputes Cases (Other than Directives on Appeals from Directives of a Board Agent).* (See Section 802.13.)

§ 802.47 *Requests for Interpretation and Clarification of Board Rulings (Other than Rulings on Appeal from Rulings of a Board Agent).*

If, after the issuance by the Board of a ruling on an application for a voluntary wage or salary adjustment, a question arises concerning the interpretation of any provision of the ruling, any party to the application may file with the Board five copies of a request for clarification or interpretation of the ruling, provided that a copy of such request is at the same time transmitted by such party to all other parties to the application, and notice of the date of such transmittal is included in the request. Such other parties shall have ten days from the date of the receipt of a copy of the request in which to mail comments thereon to the Board. The request and the comments thereon shall be referred to the Post-Directive Committee (see Section 801.12) which shall examine the same in the light of the record in the case. If the Committee reaches a unanimous decision as to the meaning of the Board's ruling, the decision shall be communicated to the parties. Where the decision of the Committee is not unanimous, or in any case where a member of the Committee so requests, the question shall be presented by the Chairman of the Committee to the Board for its determination.

§ 802.48 *Petitions for Reconsideration of Board Rulings (Other than Rulings on Appeals from Rulings of a Board Agent).* A petition for reconsideration of a ruling of the Board on an application for approval of a voluntary wage or salary adjustment may be filed by any party to the application within fourteen days after the issuance of such ruling, provided that a copy of such petition is at the same time mailed by the petitioner to all other parties to the application, and notice of the date of mailing is included in the petition. Such petition shall be filed with five copies thereof, and shall set forth fully the reasons for requesting reconsideration of the application. The other parties to the application shall have ten days from the date of the receipt of a copy of the petition in which to mail to the Board comments thereon. The petition and the comments thereon shall be referred to the Post-Directive Committee, which shall examine the petition in the light of the record in the case and shall make a recommendation to the Board on the question involved. The Chairman of the Committee shall present the petition to the Board together with the recommendation of the Committee. The Board will either grant or deny the petition. If the petition is granted, the case will be reconsidered and such disposition made or further procedure ordered therein as the Board may determine.

§ 802.49 *Reconsideration of Board Orders or Rulings in Appeals Cases.* (See Section 802.43.)

OFFICE OF WAR INFORMATION
NATIONAL WAR LABOR BOARD

[For release at 8:30 p. m., Thursday, June 1, 1944.]

ADDRESS BY DR. FRANK P. GRAHAM, PUBLIC MEMBER OF THE NATIONAL WAR LABOR BOARD, ON TOWN HALL OF THE AIR, DAYTON, OHIO, JUNE 1, 1944

America is in crisis on the home front on the eve of the Western European invasion. Montgomery Ward is blasting at the foundations of maximum production. The maintenance-of-membership provision in issue is vital to the production front and the battlefront. America has two great fronts: The war front and the home front. The home front is the great second front. The war front has six main battle fronts, Russian, Mediterranean, Western European, South Pacific, West Pacific, and Asiatic. The American home front, with its stupendous production, is the mighty base for winning the war on all these battlefronts. The two great responsibilities of the home front are maximum production and minimum inflation. The maintenance-of-membership provision is necessary for maximum production and minimum inflation.

Before Pearl Harbor but on the eve of America's entrance into the war the Nation was shaken and production threatened by the bitter, stubborn struggle over the open and closed shop. The situation then made it clear that this issue, if unsettled, would endanger America caught between the tides of war rolling heavily in the two great oceans, east and west. An answer to the crucial and complex issue in a fair, clear and stable policy had to be found. The answer was found in the maintenance of membership. Out of the shock of Pearl Harbor was born the no-strike, no-lock-out agreement of patriotic labor and patriotic management to settle all disputes by accepting the decisions of a tripartite War Labor Board. It is the national policy made necessary by the war to substitute for the Nation-wide conflict over the open and closed shop the Nation-wide acceptance of the Board's decisions on the merits for the maintenance of a voluntarily established membership in a responsible union. This provision is not a closed shop, is not a union shop and is not a preferential shop. The employer has the right to hire, fire, and direct the working force. No new employee has to join the union to get a job. No old employee has to join the union to keep his job. If already in the union, a member has 15 days within which to get out of the union and keep his job. This freedom to join or not to join, to stay in or get out, with foreknowledge of being bound by this provision to maintain his membership in good standing, as a condition of employment during the contract, provides for equity, liberty, and security for war production.

It is also the national policy made necessary by the war and the competition of more consumer dollars for less consumer goods to substitute for strikes over wage decisions of the War Labor Board. The workers thus have two ceilings over them. The national policy, in the interest of a concentration on production, has placed a ceiling on the bitter struggle over the closed shop. The national policy in the interest of protecting all people against the cruel demoralizing disasters of inflation, placed a ceiling on the struggle of the unions for increased wages above the stabilization line.

With two ceilings over the workers there should be a solid floor under the workers as a matter of simple justice, common decency, and stabilized production for winning the war. This floor is the maintenance of membership now well tested and reasonably secure for supporting the union against disintegration under the impacts of the war.

To knock out this floor now would bring down in ruins the whole structure of economic stabilization, ceilings and all. Strikes instead of being wildcat and sporadic would become uncontrollable and a menace to the war. Inflation instead of being tied to stable anchors would run away, spiraled upward by the cruel race between wages and prices, with all people losing except the speculators and profiteers. If Montgomery Ward breaks down the maintenance-of-membership policy, it will break down the war policies for maximum production and minimum inflation on this great American home base necessary to winning the war on all the battlefronts of the world.

Two main assaults have been made against the national war policies of this great American home base. In the coal case a terrific assault was made against wage stabilization; but the line held. Four reprehensible strikes with all their threat to the war failed to break the line staunchly held by the War Labor Board.

The miners deservedly got increased earnings for increased working time in

digging more coal and in counting travel time underground as working time in the computing of overtime under the Fair Labor Standards Act all within the principles of the recent decisions of the highest courts. The mistaken insistence that the line was broken in the coal case has been a most dangerous threat to that line. It is important for the war that it be known that the miners received what they did because of the merits of their case, not because of their strikes.

It is our faith that the line will also hold against the terrific assault of Montgomery Ward against the maintenance of membership sector of the line. When the miners struck the mines were seized. The seizure was not resisted. Those leaders of the miners who were found guilty of violating the War Labor Disputes Act are now under the sentence of the courts. Montgomery Ward's defiance of the Government, with its epidemic possibilities for defiance by corporations and strikes by unions, forced a patient and reluctant government to seize the plant in the interest of the war effort. The greatest threat to maximum production for the war is in the sorry imitation of the main pattern makers of disunity, confusion and disruption by unrepresentative and irresponsible leaders in business and labor. These imitators are now a dangerous threat both to responsible American business enterprise, and to the responsible labor movement, and all their basic American values not only to the war but also to the freedom and democracy for which the war is fought.

The War Labor Board, in its struggles with a few obstructionists and disruptionists, remembers the inarticulate millions who work and fight beyond the claims and clamor of the hour. Daily making fair adjustments of wages and daily providing for union maintenance within the twofold policy of stabilization, the War Labor Board, with its back to the wall, mightily assailed from two sides, still holds the heavily battered but unbroken line. The fateful and decisive issues of the global war on all fronts depend upon American production. Stabilized maximum American production depends upon (1) the stabilization of the union against disintegration, and (2) the stabilization of wages and prices against inflation. Twofold economic stabilization depends upon twofold acceptance of the decisions of the War Labor Board as the umpire appointed to hold this crucial sector of the embattled line. It is part of our historic Americanism to accept the decisions of the umpire from the youthful days of back lot baseball to the most critical days of the war.

The American people in the midst of a war will back the umpire against the pattern makers of defiance and obstruction. The American people will back the war effort against the giants, who, in frustration, hate, and fear of the democratic trends of the age, would pull down the two pillars of the temple of freedom and production. Montgomery Ward would have us return to a policy which would make paramount a disruptive internal conflict between capital and labor above the global conflict between the United Nations and the Axis Powers. For the War Labor Board to side-step this issue would undermine and blast the foundations supporting the gigantic American production for winning the war. The American people will not tolerate the disruption of the continental American home base upon which still depend the six main battlefronts of the war. The few obstructionists need to become aware of what is in the almost unspoken depths of that vast body of Americans in simple homes to whom their brave men and their cause come first. The American people want to sacrifice something to share in the supreme sacrifice of their sons. They accept economic stabilization, rationing, price ceilings, wage controls, the decisions of the War Labor Board, selective service, and the loss of brave men. They accepted maintenance of membership for maximum production as a now stabilized part of the struggle of working people to have a simple share in the organization of their own freedom and simple share in the control of their own lives and labor as one of the foundations of the democracy for which their sons are dying on all the battlefronts of freedom for winning the war, and pray God this time, for the international organization and enforcement of justice and peace in the world.

MEMORANDUM REPORT OF THE DELIBERATIONS OF THE WAR-LABOR CONFERENCE CONVENED BY THE PRESIDENT IN THE CITY OF WASHINGTON, DECEMBER 17, 1941

The conference met at 10 a. m. on Wednesday, December 17, 1941, in the board room of the Federal Reserve Building. After photographs were taken for the press, the members of the conference proceeded to the White House, where the President impressed upon them their duties and responsibilities.

The conference then reconvened in the Federal Reserve Building, where the invocation was pronounced by the Rev. Msgr. Francis J. Haas, of Catholic University.

The deliberations of the conference then commenced. The moderator and the associate moderator spoke briefly, outlining the scope of the conference's work. The conference then recessed for luncheon, at which the members were guests of the Secretary of Labor.

The afternoon session was consumed entirely with a general discussion of the problems confronting the conference. Each member was called upon for a statement. The only specific proposal brought forward was a resolution proposed by Mr. Murray calling for the creation of joint industry councils in all war industries.

Upon the morning of Thursday, December 18, the representatives of management presented a proposed declaration of principles, but did not suggest the creation of any specific machinery to settle industrial disputes. The American Federation of Labor representatives presented a rather detailed proposal for the creation of a War Labor Board to settle by conciliation, mediation, and arbitration all industrial disputes.

On Thursday afternoon the representatives of the Congress of Industrial Organizations presented a proposal similar in many respects to that made by the representatives of the American Federation of Labor. At this point the representatives of labor requested a recess in order that a subcommittee from the American Federation of Labor and the Congress of Industrial Organizations might meet jointly. Later in the afternoon the representatives of both labor groups presented a joint proposal, attached hereto as exhibit A. From this proposal the representatives of labor did not at any time depart during the remainder of the conference, and it remained their joint and basic declaration.

The representatives of management then requested a recess until Friday morning in order that they might consider the labor proposal.

The conference reconvened on Friday, December 19, at 10 a. m. The representatives of management stated that they were not ready to report to the full conference, and requested a further recess until 2 p. m.

The conference reconvened at 2 p. m. and representatives of management brought to the full conference a proposal which substantially reiterated the declaration of principles previously put forward, and proposed a War Labor Board of 11 members.

Some time was consumed in the discussion of the two proposals then before the conference. It was apparent that upon all issues except one, the conference would be able to reach a substantial agreement.

Upon one issue, however, the conferees seemed in hopeless disagreement. The representatives of management insisted that neither the closed shop nor any alternative device for union security could be made an appropriate subject for arbitration, except in connection with the extension of existing union security agreements.

The representatives of labor, on the other hand, took the position that, since the closed shop was specifically made by the Wagner Act a legitimate subject for collective bargaining, labor should have the right to submit its claims for union security to arbitration in the same manner as any other grievances.

When this disagreement began to assume the character of a deadlock, some members of the conference suggested that the moderators wait upon the President and inform him of the disagreement, transmitting to him copies of the conflicting proposals.

The moderators informed the conference that the President expected an agreement from them, and that he expected them to remain in session until such an agreement was reached.

It was finally agreed that the conference should recess until Monday, December 22, and that the representatives of management should attempt at that time to present a proposal to the full conference.

When the conference convened on December 22, the representatives of management presented a paper to the full conference which set forth a procedure for settlement of disputes by the proposed war labor board, but retained the reservation of their previous proposals. A copy of this proposal is appended as exhibit B.

After some discussion, Senator Thomas spoke forcefully and earnestly, setting forth the three propositions which he thought presented a basis for agreement.

At the conclusion of Senator Thomas' remarks, Mr. Meany moved that the conference adopt these three propositions set forth by Senator Thomas as its unanimous recommendation to the President. A copy of Mr. Meany's motion is appended as exhibit C.

The representatives of industry thereupon asked for a recess, during which they conferred first with Senator Thomas and afterward with Mr. Davis, and after consultation among themselves; brought in a proposed substitute for Mr. Meany's motion. A copy of this substitute is appended as exhibit D.

At this point Mr. Murray offered a resolution suggesting the elimination of all profits from war contracts. This was discussed and rejected by equal division. The representatives of labor voted to accept it, and the representatives of management took a contrary view. A copy of this proposal is appended as exhibit E.

Thereafter the substitute for Mr. Meany's motion was put to a vote and rejected by equal division, the representatives of industry voting for it and the representatives of labor against it. Then Mr. Meany's motion was put to a vote and was rejected by equal division, the representatives of labor voting for it and the representatives of industry voting against it.

On the afternoon of Monday, December 22, the conference recessed to meet again in the conference room of the Department of Labor at 2 p. m. on Tuesday, December 23, 1941.

The conference reconvened on Tuesday at the designated time and place. The moderators then presented to the conference the President's letter, which was accepted as the basis of agreement by the entire membership of the conference. The conference then adjourned subject to recall by the President.

Appended hereto is exhibit F, a list of the members of the conference, and a copy of the President's letter of December 23, 1941, marked "Exhibit G."

WILLIAM H. DAVIS,
Moderator.
ELBERT D. THOMAS,
Associate Moderator.
EDWARD F. PRITCHARD, Jr.,
Executive Secretary.

EXHIBIT A. PROPOSAL FOR ESTABLISHMENT OF STABLE INDUSTRIAL RELATIONS, JOINT SUBMISSION OF LABOR GROUPS, DECEMBER 18, 1941

This conference desires to express its deep appreciation of the need of establishing cooperative relations between labor and management as the best guaranty for achieving the maximum production of war materials required in the victory war program.

Toward this end this conference recommends the establishment of the following machinery for the peaceful adjustment of industrial disputes and endorses the following principles as being most conducive toward the attainment of stabilized industrial relations.

(1) Conciliation, mediation, and voluntary arbitration shall be the method relied upon for the achievement of industrial peace.

(2) Disputes arising between employers and labor unions representing the employees shall be adjusted in the following manner:

(a) Disputes may arise either under a collective-bargaining agreement, or in regard to terms and conditions of a renewal thereof, or in connection with the consummation of an initial collective-bargaining agreement where none has existed theretofore.

(b) In the case of any such dispute, the provisions of a collective-bargaining agreement, where existing, must first be completely exhausted in connection with the settlement of any such dispute, including arbitration, if so provided therein.

(c) The President of the United States shall establish by Executive Order a national war labor board comprised of an equal number of representatives of industry and organized labor and one representative of the public, who shall act as chairman. Any dispute which has not been settled in the foregoing manner may be certified to the National War Labor Board by the chairman either upon the request of the Secretary of Labor or upon application of either party to the dispute. The Board, in accordance with the rules and regulations which it shall promulgate, shall make every reasonable effort, including voluntary arbitration, to assist the parties to adjust and settle the dispute and make the necessary arrangement therefor. In the event the Board cannot adjust the dispute, it shall submit to the parties and make public its findings and recommendations.

(d) In no event shall the National War Labor Board attempt to adjust a controversy when there is by agreement or Federal law a means of settlement.

(e) In the case of any labor dispute not adjusted under a collective-bargaining agreement, the Conciliation Service of the Department of Labor, operating under the direction of the National War Labor Board, shall attempt to bring about a mutually satisfactory adjustment between the parties. Increased appropriations should be made available to the Conciliation Service of the Department of Labor in order that it may be able to function on an expanded basis and provide the necessary and adequate facilities.

(f) Cases within the jurisdiction of the Board shall be brought to final adjustment as expeditiously as possible. In all cases final adjustment of all issues in disputes shall be secured within 30 days.

(g) Except as hereinbefore provided, all labor matters involving conciliation or mediation shall be within the exclusive jurisdiction of the National War Labor Board.

(3) The guiding principles of the National War Labor Board in the adjustment of disputes shall be determined by the following basic policies:

(a) It is hereby declared that all workers have a right to a living wage, as a minimum, sufficient to maintain full efficiency, good health, and well being for themselves and their families.

(b) The labor policies as established in the National Labor Relations Act, the Wages and Hours Act, the Walsh-Healey Act, the Davis-Bacon Act, and the Norris-LaGuardia Act shall continue unimpaired.

(c) The normal processes of collective bargaining between employers and labor unions shall continue with respect to wages, hours, and other terms and conditions of employment. One of the basic and justified aspirations of organized labor to be achieved through collective bargaining is the establishment of union security. It is only through the processes of such collective bargaining on a voluntary basis that the necessary conditions can be established which will assure the maximum production without any undue sacrifice on the part of one group for the sake of enhancing the interests of another.

(d) It shall be the accepted policy on the part of management and organized labor that there shall be no stoppages of work or lock-outs during the present war. And recommends that:

(3) A National War Labor Board shall be promptly established as hereinafter provided.

Labor disputes, which interfere with the effective conduct of the war, whether they arise under a collective-bargaining agreement, or in regard to terms and conditions of a renewal thereof, or in connection with the consummation of an initial collective-bargaining agreement, or in any other way, shall be settled in the following manner:

1. In the case of any dispute arising under a collective-bargaining agreement, the procedures for adjustment, if any, provided under such agreement shall first be completely exhausted.

2. In disputes which cannot be settled by negotiations between the parties the Conciliation Service of the United States Department or other appropriate public agencies shall attempt to bring about a mutually satisfactory adjustment.

3. In case a dispute is not settled by the methods described above it may be certified by the Secretary of Labor to the National War Labor Board to be appointed by the President.

4. The National War Labor Board shall consist of 11 members appointed by the President, after nomination in the following manner: Four members shall be representative of employers and shall be nominated by the Secretary of Commerce; 4 members shall be representative of labor and shall be nominated by the Secretary of Labor; 3 members shall be appointed by the President from the general public. One of the public members shall be designated as chairman by the President.

In order to insure effective operation of the Board, there shall be provided a sufficient number of alternates in each classification. Such alternates shall be nominated and appointed in the same manner as the members of the Board.

5. The functions and powers of the Board shall be as follows:

(a) The Board, in accordance with the rules and regulations which it shall promulgate, shall make every reasonable effort, including voluntary arbitration when and in such manner as agreed upon between the parties, to assist in adjusting and settling disputes certified to it.

(b) Cases within the jurisdiction of the Board shall be brought to final adjustment as promptly as possible. Every effort should be made to secure final adjustment of a dispute within 30 days after the Board takes jurisdiction.

(c) If the Board shall fail to bring about an agreed settlement, it may make findings and recommendations, which it may publish.

If the recommendations of the Board in any case are not accepted by one or more parties to the dispute, then an umpire appointed in the manner provided in the next subsection shall hear and consider the controversy under rules of procedure to be prescribed by the Board. The findings and recommendations of the umpire shall be made public in the same manner and with the same effect as findings and recommendations of the Board.

In any case where one or more parties to a dispute before the Board shall fail or refuse to accept the recommendations of the Board, then by agreement of the parties an umpire may be appointed, and in such instances the award of the umpire shall be final and binding upon the parties.

(d) The members of the Board shall, if possible, choose an umpire by unanimous vote. Failing such choice, the name of the umpire shall be drawn by lot from a list of qualified persons to be nominated for the purpose by the President of the United States.

(e) The Board shall refuse to take cognizance of a dispute in any field of industrial or other activity where there is by agreement or law a means of settlement which has not been invoked.

(f) The Board shall have power to appoint a secretary, and to create such organization under it as may be in its judgment necessary for the discharge of its duties.

(g) The Board should have authority to issue subpoenas to require the attendance and testimony of parties to disputes before it and the production of relevant documentary evidence.

(h) The Board may from time to time promulgate such administrative rules, regulations, and procedures as it deems necessary to the discharge of its functions.

6. The Board and the umpires shall be governed by the following basic policies:

(a) Every effort shall be made to maintain the high standards of American wages and working conditions. In the determination of wages, hours, and conditions of labor, full consideration shall be given to local labor standards, wage scales, and living costs.

(b) Since the right to work should not be infringed by Government order through requirement of membership in any organization, whether union or otherwise, the issue of the closed shop is not a proper subject for consideration or arbitration by the Board and shall not be included as an issue in any dispute certified to it. The term "closed shop" includes any provision which requires a person to become or remain a member of a labor organization in order to get or hold a job, or have preference in respect of employment.

For the duration of the war employers shall not attempt to change the terms in present contracts, which provide for the closed shop or any of its modifications, except where such change is necessary to conform to the law. Where a closed-shop contract does not now exist it may be arrived at by voluntary negotiations between the employer and the labor organization concerned.

7. The Nation is entitled to adequate assurance that these policies and procedures will be observed by employees, labor organizations, and employers. It is of vital importance that voluntary acceptance be accompanied by a forthright declaration of public policy, whether in the form of legislation or an Executive order, which will secure general compliance.

EXHIBIT C. RESOLUTION

Move that this conference send to President Roosevelt as our unanimous recommendation the three-sentence message suggested by Senator Thomas:

1. There shall be no strikes or lock-outs.
2. All disputes shall be settled by peaceful means.
3. The President shall set up a proper War Labor Board to handle these disputes.

EXHIBIT D. RESOLUTION

We offer the following substitute motion:

1. There shall be no strikes or lock-outs.
2. All disputes shall be settled by peaceful means.
3. The President shall set up a proper War Labor Board to handle these disputes.

4. The Board shall be governed by the following basic policy:
Since the right to work should not be infringed by Government order through requirement of membership in any organization, whether union or otherwise, the issue of the closed shop is not a proper subject for consideration or arbitration by the Board, and shall not be included as an issue in any dispute certified to it.

The term "closed shop" includes any provision which requires a person to become or remain a member of a labor organization in order to get or hold a job, or have preference in respect to employment.

For the duration of the war employers shall not attempt to change the terms, in present contracts, which provide for the closed shop or any of its modifications, except where such change is necessary to conform to the law. Where a closed-shop contract does not now exist it may be arrived at by voluntary negotiations between the employer and the labor organization concerned.

EXHIBIT E. MURRAY RESOLUTION

It is hereby resolved that industry in America in a wholesome desire to make a contribution toward America's war effort, offer to the Government of the United States that they shall not extract from the public purse profits of any kind from defense contracts secured during the course of the war.

EXHIBIT F. LABOR-INDUSTRY COMMITTEE

Moderator William H. Davis, Chairman, National Defense Mediation Board.
Associate moderator, Senator Elbert D. Thomas of Utah, chairman, Senate Labor Committee.

Industry

Lawrence D. Bell, president, Bell Aircraft Corporation.
W. Gibson Carey, Jr., president, Yale & Towne Manufacturing Co., New York.
C. S. Ching, vice president, United States Rubber Co.
Donald Comer, board chairman, Avondale Mills, Birmingham.
Robert M. Gaylord, president, Ingersoll Milling Machine Co., Rockford, Ill.
Paul G. Hoffman, president, Studebaker Motor Co.
Charles R. Hook, president, American Rolling Mill Co.
Thomas R. Jones, president, American Type Foundry, Inc.
Roger D. Lapham, board chairman, American-Hawaiian Steamship Co., San Francisco.
Reuben B. Robertson, president, Champion Fiber Co., Canton, N. C.
Charles E. Wilson, president, General Electric Co.
W. P. Witherow, president, Blaw-Knox Co., Pittsburgh.

Labor

American Federation of Labor: William Green, president, American Federation of Labor; John P. Coyne, president, building trades department; John P. Frey, president, metal trades department; George Meany, secretary-treasurer, American Federation of Labor; Daniel J. Tobin, president, International Brotherhood of Teamsters; Matthew J. Woll, vice president, American Federation of Labor.
Congress of Industrial Organizations; Philip Murray, president, Congress of Industrial Organizations, and chairman, Steel Workers Organizing Committee; John L. Lewis, president, United Mine Workers of America; R. J. Thomas, president, United Automobile, Aircraft & Agricultural Implement Workers of America; Joseph Curran, president, National Maritime Union; Emil Rieve, president, Textile Workers of America; Julius Emspak, secretary-treasurer, United Electrical Radio and Machine Workers.

EXHIBIT G

THE WHITE HOUSE,
Washington, December 23, 1941.

Gentlemen of the Conference:

Moderator Davis and Senator Thomas have reported to me the results of your deliberations. They have given me each proposition which you have discussed. I am happy to accept your general points of agreement as follows:

1. There shall be no strikes or lock-outs.
2. All disputes shall be settled by peaceful means.
3. The President shall set up a proper War Labor Board to handle these disputes.

I accept without reservation your covenants that there shall be no strikes or lock-outs and all disputes shall be settled by peaceful means. I shall proceed at once to act on your third point.

Government must act in general. The three points agreed upon cover of necessity all disputes that may arise between labor and management.

The particular disputes must be left to the consideration of those who can study the particular differences and who are thereby prepared by knowledge to pass judgment in the particular case. I have full faith that no group in our national life will take undue advantage while we are faced by common enemies. I congratulate you—I thank you, and our people will join me in appreciation of your great contribution.

Your achievement is a response to common desire of all men of good will that strikes and lock-outs cease and that disputes be settled by peaceful means.

May I now wish you all a Merry Christmas.

Very sincerely yours,

FRANKLIN D. ROOSEVELT.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C., June 9, 1944.

Hon. ROBERT RAMSPECK,
Chairman, Select Committee Investigating Seizure of Montgomery Ward & Co., House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: On June 6 and 7, 1944, representatives of Montgomery Ward & Co. appeared before your committee and testified that the National Labor Relations Board had "gerrymandered" the voting units in the Ward case so as to insure a union victory at the Chicago operations of the company. Because of the gravity of this charge, although it is not supported in the formal record compiled before our agency, I immediately requested our Chicago office to check into the informal records of the election to see whether the election would have resulted otherwise if our Board had established four instead of two voting units, as urged by the company. I have just received a reply from our Chicago director and would like to take this opportunity to present to the committee the complete picture, based upon our formal record and upon the report from our Chicago office.

Mr. Barr testified that the Board had "previously established" the Schwinn warehouse as a separate bargaining unit. The Board's decision of July 11, 1940, to which reference is made, resulted from a proceeding in which the company's main contention was that "a unit comprising all of its employees in the Chicago area * * * would be appropriate"; the union urged that the appropriate unit should consist solely of the employees at the Schwinn warehouse.

The Board considered the conflicting contentions of the parties, the integrated nature of the company's operations in the Chicago area, the extent to which the employees had shown an interest in organization, and stated in its decision:

"Under all the circumstances, we are of the opinion that the employees involved herein [at the warehouse] could function effectively either together with the remaining employees of the Chicago mail-order house, or as a separate unit for the purposes of collective bargaining. * * * Since organization of the company's employees in the Chicago area has extended to date only to the employees of the Schwinn warehouse unit, and since the union is the only labor organization existing among the company's Chicago employees, we find the unit requested by the union to be appropriate. To find otherwise would be to deny collective bargaining to the Schwinn warehouse employees until all the employees of the company constituting the Chicago mail-order house had been organized." (25 N. L. R. B. 318).

Thus, the formal record demonstrates that the warehouse as a unit was not permanently "established." Rather, the parties were put on notice as far back as 1940 that the larger unit, at that time urged by the company, would be found by the Board to be proper for purposes of collective bargaining if and when the employees' interest in organization should extend over the company's Chicago operations.

Further, the company's representatives stated before your committee: "The clear purpose of this gerrymandering was to use the union's majority in the Schwinn warehouse to insure a union victory in all three locations (the warehouse, the retail store, and the mail-order house)." The report just submitted to me by our Chicago director conclusively proves that even if the three groups were voted and counted separately, the union would still have attained majority status in each unit.

By checking the pay rolls used at the election booths, our regional director found that unchallenged ballots were cast in the following distribution: At the warehouse, 303; at the retail store, 204; and at the mail-order house, 3,407. Taking a position most favorable to the company's charges, and assuming that every one of

the 303 votes cast at the warehouse was in favor of the union, and subtracting this number from the union vote in the large unit, the union would have won more than a majority in the remaining unit composed of the retail store and the mail-order house—2,037 out of 3,611 votes cast in the latter two groups. Further assuming that every one of the votes cast at both the warehouse and retail store, a total of 507 was in favor of the union, more than a bare majority would have been won by the union in the mail-order house—1,833 out of the 3,407 cast in this remaining group.

I should also like to point out that had the Board been inclined to gerrymander the bargaining unit in order to increase the chances of the union's success, it would have granted the union's contention that the administrative employees in the four small units should also have been included in the larger unit. The company had conceded earlier that the union probably had a majority in these units. The Board, however, placed these employees in a separate unit which resulted in a victory for the union, with 100 votes cast in favor of the petitioner and only 28 against.

The testimony of the representatives of the Company was also misleading on another point. When I was before the committee, I pointed out that the reason the election was not ordered earlier by the National Labor Relations Board was that we had no petition before us until February 14, 1944. In response to questions I said the company had not asked us to hold an election in the early stages of the dispute and that if we had received such a request we might have given some consideration to amending the rule. Mr. Barr contradicted the statement by asserting that the company had written the National Labor Relations Board, demanding an election. Upon an examination of the file, however, I discover that this letter was not written until January 27, 1944, which was 12 days after the War Labor Board's order had been published, requiring the union to file a petition. A copy of this letter is enclosed.

I should appreciate it if this letter were incorporated in the record of your committee proceedings.

Faithfully yours,

GERARD D. REILLY, Member.

MONTGOMERY WARD,
Chicago, January 27, 1944.

NATIONAL LABOR RELATIONS BOARD,
Thirteenth Region, Chicago, Ill.

(Attention: George J. Bott, Regional Director.)

GENTLEMEN: On November 16, 1943, the United Mail Order, Warehouse and Retail Employees Union, Local 20, Congress of Industrial Organizations, requested to bargain with Ward's on behalf of the employees in seven bargaining units at Chicago. Ward's recognized the union, and stood ready to bargain with respect to five of these units but questioned the union's representative status in the remaining two units, namely, the mail-order house and retail store units. Ward's offered to have this issue decided either by a card check against pay roll or by an election to be held under the auspices of your office. The union failed to take either of these steps but, instead, appealed to the National War Labor Board.

On January 15, 1944, the National War Labor Board issued an order providing for submission of this representation issue to the National Labor Relations Board for determination.

This is to inform you that Ward's has no objection to your Board conducting an election among the employees of these two units to determine whether a majority desire this union to represent them in collective bargaining.

Yours very truly,

JOHN A. BARR,
Manager of Labor Relations.

Cc: National Labor Relations Board, Washington, D. C.
Mr. Wm. Davis, Chairman, National War Labor Board, Washington, D. C.

UNITED RETAIL, WHOLESALE AND DEPARTMENT
STORE EMPLOYEES OF AMERICA,
Washington, D. C., July 18, 1944.

Hon. ROBERT RAMSPECK,
Chairman, the Select Committee to Investigate
Montgomery Ward Seizure, House Resolution 521,
House Office Building, Washington, D. C.

DEAR MR. RAMSPECK: In compliance with the agreement reached during my testimony, I am submitting herewith information regarding the number of strikes in the Chicago area in April 1944, the time of the Montgomery Ward strike. Two lists are attached. One was prepared by the Bureau of Labor Statistics, listing strikes beginning in April 1944 in Cook and Du Page Counties, Ill., and Lake County, Ind. The second list was submitted by Mr. Edgar L. Warren, chairman of the Chicago Regional War Labor Board, and includes strikes which occurred during the month of April 1944 in the sixth war labor board region, Chicago, Ill. I hope this material will be included in the record.

Respectfully yours,

SAMUEL WOLCHOK, President.

Strikes beginning in April 1944 in Cook¹ and Du Page Counties, Ill., and Lake County, Ind.

| Company and location | Union involved |
|--|---|
| Bucyrus-Monaghan Co., Chicago..... | United Steelworkers of America. |
| Chicago Pottery Co., Chicago..... | United Automobile Workers, American Federation of Labor. |
| Gar Wood Industries, Inc., Chicago..... | International Association of Machinists and United Farm Equipment and Metal Workers of America, Congress of Industrial Organizations. |
| Mojonnier Bros. Co., Chicago..... | United Automobile Workers, American Federation of Labor. |
| Radio Station WJJD, Chicago..... | American Federation of Musicians. |
| San-Equip, Inc., Chicago..... | No union involved. |
| Tropic-Aire, Inc., Chicago..... | International Association of Machinists. |
| The Western Foundry Co., Chicago..... | United Steelworkers of America. |
| The Wilson Laboratories, Chicago..... | United Gas, Coke and Chemical Workers, Congress of Industrial Organizations. |
| Wilson Steel & Wire Co., Chicago..... | United Steelworkers of America. |
| Acme Steel Co., Riverdale..... | Do. |
| St. Adalbert's Cemetery, Niles..... | Building Service Employees International Union. |
| Taylor Forge & Pipe Works, Cicero..... | United Brotherhood of Welders, Cutters and Helpers. |
| Reid, Murdoch & Co., West Chicago..... | International Brotherhood of Firemen and Oilers and International Brotherhood of Teamsters and Chauffeurs. |
| Carnegie-Illinois Steel Corporation, Gary..... | United Steelworkers of America. |
| Do..... | Do. |
| Pullman Standard Car Manufacturing Co., Hammond..... | Do. |

¹ Strike at Montgomery Ward & Co., Chicago, not included.

List of strikes which occurred during the month of April 1944 in the sixth War Labor Board region at Chicago, Ill., submitted by Mr. Edgar L. Warren

1. Ordnance Steel Foundries (Betendorf, Iowa).
2. Key Co. (East St. Louis, Ill.).
3. Mojonner Bros. (Chicago, Ill.).
4. American Sanitary Rag Co. (Chicago, Ill.).
5. Twin City Groceries (Conciliation Service).
6. Gardner-Denver Co. (Quincy, Ill.) (Conciliation Service).
7. Continental Can Co. (Chicago, Ill.).
8. Wilson Laboratories (Chicago, Ill.).
9. Dalton Foundries.
10. John Deere Spreader Works (threatened strike referred to Conciliation Service).
11. LaCrosse Rubber Co. (Washington).
12. Bucyrus-Mohinham.
13. Montgomery Ward Co. (Washington).
14. Oakley Mills Western Foundries.
15. Pullman Standard Co. (Hammond Ordnance) (Washington is handling).
16. J. I. Case Co. (Rockford, Ill.).
17. Gardner Deiver Co. (Conciliation Service).
18. Atlas Imperial Diesel Engine Co.
19. Western Foundry (Chicago, Ill.).
20. Chicago Pottery Co. (Chicago, Ill.).
21. Allis-Chalmers (West Allis, Wis.).
22. Foster-Lothman Co. (Oshkosh, Wis.).
23. Indianapolis Household Furniture Movers (Indianapolis, Ind.).
24. Wisconsin Motor Corporation (Milwaukee, Wis.).
25. Allied Mills (Peoria, Ill.).
26. Showers Bros. (Bloomington, Ind.).
27. American Zinc Co. (Fairmont City, Ill.).
28. Tuthill Manufacturing Co. (Chicago, Ill.).
29. International Harvester Co. (Canton, Ill.).
30. Taylor Forge & Pipe Co. (Cicero, Ill.).
31. Koppers Co. (Brookport, Ill.).
32. General Refractories (Joliet, Ill.).
33. Pullman Standard Car Manufacturing Co. (Michigan City, Ind.).

UNITED RETAIL, WHOLESALE & DEPARTMENT
STORE EMPLOYEES OF AMERICA,
New York, N. Y., June 14, 1944.

HON. ROBERT RAMSPECK,
House of Representatives, Washington, D. C.

DEAR CONGRESSMAN RAMSPECK: I am enclosing herewith a copy of letter which was addressed to President Roosevelt under date of April 12, 1944.

We would appreciate your bringing this enclosure to the attention of the members of your committee. Particularly Congressman Elston, who requested that a copy be mailed to the committee.

Very truly yours,

SAMUEL WOLCHOK, *President.*

APRIL 12, 1944.

PRESIDENT FRANKLIN DELANO ROOSEVELT,
The White House, Washington, D. C.

DEAR PRESIDENT ROOSEVELT: We quote below copy of telegram which we have this day sent to William H. Davis, Chairman of the National War Labor Board, and Lloyd K. Garrison, public member of the National War Labor Board. This is for your information:

"A strike affecting 6,000 Montgomery Ward workers broke in Chicago this morning. Local 20, the union involved in this situation is only seeking the enforcement of the National War Labor Board directive order of January 13 and April 6. On the basis of a series of telephone calls from organized Ward plants I can assure the Board that it will be impossible to prevent the extension of the strike to other cities throughout the country where the Congress of Industrial Organizations is organized. I urge the Board to take such immediate steps

as are necessary to obtain compliance. Only in this way will it be possible to bring about an immediate solution to this urgent problem and remove a serious and growing threat to industrial peace in this important war-industry center."

The War Labor Board is aware of the fact that we have every desire to observe our no-strike pledge in one of the principal war centers in this country. Our record of compliance is known to all war agencies.

About a year ago, in a similar situation, you ordered the Montgomery Ward Co. to comply. At that time, Montgomery Ward Co. used the public press to besmirch the War Labor Board, its officers and the President of the United States. They accused the War Labor Board and the President of acting without authority and disregarded the excellent work done by the War Labor Board in its effort to maintain peaceful and harmonious relations between management and labor.

The Montgomery Ward Co., by refusing to abide by the decision of the War Labor Board, threatens to provoke a series of strikes throughout the United States, injuring the war effort and destroying the effectiveness of the War Labor Board.

Our membership has complied in the past, and will continue to comply, with all directives of the War Labor Board, and will return to work immediately upon Montgomery Ward's compliance with the directives of January 15 and April 6.

We urge you to act immediately to obtain compliance of the directive order issued by one of the most important Government agencies, the War Labor Board.

Sincerely yours,

SAMUEL WOLCHOK, *President.*

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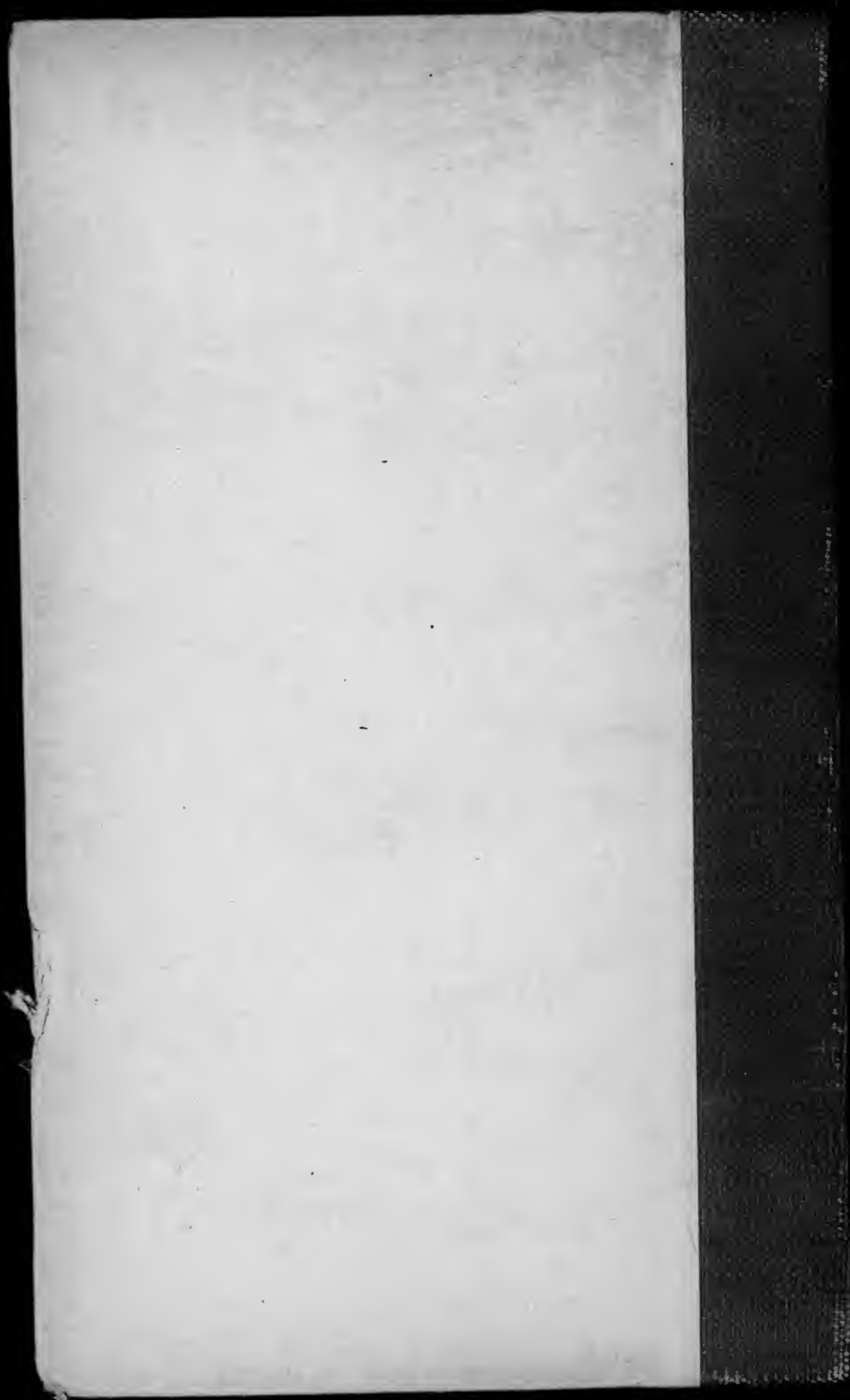
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